

DEPOSITION OF LEONARD PELHAM
CHAD HOGAN v. CITY OF MONTGOMERY

October 3, 2005

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CHAD HOGAN,

Plaintiff,

vs.

CIVIL ACTION AT LAW
CASE NO. 2:05CV687

CITY OF MONTGOMERY, et al.,

Defendants.

* * * * *

DEPOSITION OF LEONARD KIRK PELHAM, taken
pursuant to stipulation and agreement before
Mallory N. McCutchin, Court Reporter and
Commissioner for the State of Alabama at Large,
in the Law Offices of Thomas, Mean, Gillis &
Seay, 3121 Zelda Court, Montgomery, Alabama, on
Monday, October 3, 2005, commencing at
approximately 1:09 p.m.

* * * * *

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2 (Pages 2 to 5)

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES 2 FOR THE PLAINTIFF: 3 Mr. Keith Anderson Nelms 4 Mr. Jay Lewis 5 LAW OFFICE OF JAY LEWIS 6 Attorneys at Law 7 P.O. Box 5059 8 Montgomery, Alabama 36103 9 10 FOR THE DEFENDANTS: 11 Mr. Christopher K. Whitehead 12 Mr. H. Lewis Gillis 13 Ms. Ramadanah M. Salsam 14 THOMAS, MEANS, GILLIS & SEAY 15 Attorneys at Law 16 3121 Zelda Court 17 Montgomery, Alabama 36103 18 19 FOR THE DEFENDANTS: 20 Ms. Kimberly O. Fehl 21 Mr. Michael Boyle 22 Attorneys at Law 23 MONTGOMERY CITY ATTORNEY'S OFFICE P.O. Box 1111 Montgomery, Alabama 36101 FOR KIRK PELHAM: Ms. Roianne Houlton Conner Attorney at Law 250 Winton Blount Loop P.O. Box 240458 Montgomery, Alabama 36124 ALSO PRESENT: Mr. Chad Hogan Mr. Michael Briddell Mr. Billy Cautfield Mr. Ronald Cook Mr. Marquedric Gordon</p>	<p style="text-align: right;">Page 4</p> <p>1 STIPULATIONS 2 It is hereby stipulated and agreed by 3 and between counsel representing the parties that 4 the deposition of LEONARD KIRK PELHAM is taken 5 pursuant to the Federal Rules of Civil Procedure 6 and that said deposition may be taken before 7 Mallory N. McCutchin, Court Reporter and 8 Commissioner for the State of Alabama at Large, 9 without the formality of a commission; that 10 objections to questions other than objections as 11 to the form of the questions need not be made at 12 this time but may be reserved for a ruling at 13 such time as the deposition may be offered in 14 evidence or used for any other purpose as 15 provided for by the Federal Rules of Civil 16 Procedure. 17 It is further stipulated and agreed by 18 and between counsel representing the parties in 19 this case that said deposition may be introduced 20 at the trial of this case or used in any manner 21 by either party hereto provided for by the 22 Federal Rules of Civil Procedure. 23 *****</p>
<p style="text-align: right;">Page 3</p> <p>1 EXAMINATION INDEX 2 3 LEONARD KIRK PELHAM 4 BY MR. WHITEHEAD 5 5 BY MS. FEHL 127 6 BY MS. CONNER 145 7 BY MS. FEHL 150 8 BY MR. NELMS 152 9 10 EXHIBIT INDEX 11 12 DEFENDANT'S EXHIBIT NO.: 13 14 1 Verified Claim Against 74 15 the City of Montgomery 16 2 3/31/05 Memorandum 84,88,126 17 3 Affidavit 84,113-115 18 4 3/31/05 Detective Daily 19 Summary 84 20 21 5 Complaint 113,114 22 6 Warrant of Arrest 113,114 23 24 7 E-mail to Mayor Bright 123 25 from Kirk Pelham 26 8 3/31/05 Memorandum 124,125,126 27 28 PELHAM EXHIBIT NO: 29 30 1 Employee Commendation Record 147 31 2 City of Montgomery 147 32 Merit Increase 33 ***** 34</p>	<p style="text-align: right;">Page 5</p> <p>1 LEONARD KIRK PELHAM 2 The witness, having first been sworn to 3 speak the truth, the whole truth and nothing but 4 the truth, testified as follows: 5 EXAMINATION 6 BY MR. WHITEHEAD: 7 Q. Mr. Pelham, let me get you to state your name 8 for the record, please. 9 A. Leonard Kirk Pelham. 10 COURT REPORTER: Since this is federal, 11 what about read and sign? 12 MR. NELMS: Middle District rule says 13 you don't have to read and sign. 14 MR. WHITEHEAD: Yeah, okay. 15 Q. Okay. Mr. Pelham, as I just told you, I'm -- 16 my name is Chris Whitehead, and I'm 17 representing some of the defendants that have 18 been named in a lawsuit that has been filed 19 by a man named Chad Hogan. And we're going 20 to take your deposition today just to ask you 21 a few questions about some of the allegations 22 that are made in this lawsuit. It's my 23 understanding that you have some knowledge</p>

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1 about some of the allegations that he's
2 making. And that's what we're here today
3 for. Just a few preliminary things before we
4 get started. Let me ask you first, have you
5 ever given a deposition before?
6 A. No.
7 Q. Okay. Pretty straightforward. I'm just
8 going to be asking you some questions. Just
9 want you to give a verbal response to my
10 questions. Because we got a court reporter
11 and she's going to be taking it down, try to
12 avoid human nature of nodding your head when
13 an answer is yes or shaking your head when an
14 answer is no, just because she's got to get
15 it down on the record. And if you mess up a
16 couple of times -- and I'm sure you, like
17 everybody else, will, we'll try to remind you
18 as we go. Okay?
19 A. All right.
20 Q. Let me ask you, too, that if I ask a question
21 that you don't understand -- and I'm certain
22 that I probably will -- just ask me to repeat
23 it, ask me to re-clarify it. And I'll try to

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1 rephrase it as best I can so that you can
2 properly understand it. Okay?
3 A. Okay.
4 Q. A few more preliminaries. Let's see. Have
5 you taken any kind of medications in the last
6 24 hours that would affect your ability to
7 properly testify here today?
8 A. No.
9 Q. Okay. Have any problems reading or writing?
10 A. No.
11 Q. Okay. Report to anybody that you're feeling
12 sick today in any way?
13 A. No.
14 Q. Have any problems with your eye sight?
15 A. No.
16 Q. Any problems with your hearing?
17 A. No.
18 Q. Any reason you can think of that you wouldn't
19 be able to fully participate in this
20 deposition today?
21 A. No.
22 Q. Okay. Mr. Pelham, do you have a driver's
23 license?

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1 A. Yes.
2 Q. Do you know what your driver's license number
3 is?
4 A. 6478254.
5 Q. And that's Alabama?
6 A. Yes.
7 Q. Have you ever had a driver's license issued
8 in another state?
9 A. No.
10 Q. Okay. License ever been suspended or
11 revoked?
12 A. Yeah. They've been suspended several years
13 ago.
14 Q. Okay. Why was your license suspended seven
15 years ago?
16 A. Speeding ticket, I believe it was.
17 Q. Just too many points against you?
18 A. Uh-huh, yes. Yes.
19 Q. See, there we go already. Is that the only
20 time your license has been suspended?
21 A. Yes.
22 Q. Mr. Pelham, are you married right now?
23 A. Yes, I am.

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1 Q. Okay. Mr. Pelham, I'm about to ask you a
2 series of questions on some of your family
3 members that might live in the area. Let me
4 tell you why. In the event we've got to pick
5 a jury and you're a witness in the case, we
6 just need to make sure we're not putting your
7 cousin or your wife's cousin or your uncle on
8 the jury or something like that. So that's
9 why I'm going to ask you some of the
10 questions. Okay?
11 A. Okay.
12 Q. Tell me your wife's name, please.
13 A. Tiffany.
14 Q. Obviously Pelham. What was her maiden name?
15 A. Williams.
16 Q. How long have y'all been married?
17 A. A year and a few weeks.
18 Q. Is that the only time you've been married?
19 A. No. I was married once before.
20 Q. What was your former's wife name?
21 A. Porsche.
22 Q. Can you spell that for me?
23 A. P-O-R-S-C-H-E.

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<p>1 Q. What was her maiden name?</p> <p>2 A. Worrell, W-O-R-R-E-L-L.</p> <p>3 Q. Is she remarried at this point?</p> <p>4 A. I don't know.</p> <p>5 Q. Okay. Do you know what name she's going by,</p> <p>6 by any chance? Or last you heard, what last</p> <p>7 name was she using?</p> <p>8 A. Worrell.</p> <p>9 Q. Have any children?</p> <p>10 A. I have two stepchildren.</p> <p>11 Q. Both of them under the age of 19?</p> <p>12 A. Uh-huh, yes.</p> <p>13 Q. Have any brothers or sisters?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Either of them live in the state of</p> <p>16 Alabama?</p> <p>17 A. Yes.</p> <p>18 Q. Who's your brother?</p> <p>19 A. Tyrone, T-Y-R-O-N-E, and Sonny, S-O-N-N-Y.</p> <p>20 Q. So your brother is Tyrone, and your sister</p> <p>21 is --</p> <p>22 A. My younger brother, Sonny. Both brothers.</p> <p>23 Q. Oh, okay. So you've got two brothers?</p>	<p>1 Q. Where do they live?</p> <p>2 A. Her dad lives in Montgomery. Her mother</p> <p>3 lives in Gulf Shores.</p> <p>4 Q. All right. Her dad, what's his name?</p> <p>5 A. Jeff Williams.</p> <p>6 Q. You have his address by any chance?</p> <p>7 A. I do not.</p> <p>8 Q. All right. And you said mom lives in Gulf</p> <p>9 Shores?</p> <p>10 A. Gulf Shores.</p> <p>11 Q. What is Mom's name?</p> <p>12 A. I couldn't tell you. She don't -- they</p> <p>13 don't -- they don't talk.</p> <p>14 Q. Okay. Her parents have been divorced for a</p> <p>15 number of years?</p> <p>16 A. Yeah.</p> <p>17 Q. All right. Do you have any first cousins</p> <p>18 that live in the state?</p> <p>19 A. Yeah.</p> <p>20 Q. How many cousins do you have?</p> <p>21 A. Got a bunch of them.</p> <p>22 Q. Oh, goody. They all live within a hundred</p> <p>23 miles of here?</p>
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<p>1 A. Uh-huh, yes.</p> <p>2 Q. I might have misunderstood you. I thought</p> <p>3 you said you had brothers and sisters. Did</p> <p>4 you just say you had a brother?</p> <p>5 A. Just two brothers.</p> <p>6 Q. Okay. I'm sorry. Where does Tyrone live?</p> <p>7 A. Prattville.</p> <p>8 Q. You know his exact address by any chance?</p> <p>9 A. I don't.</p> <p>10 Q. Your younger brother Sonny, where does he</p> <p>11 live?</p> <p>12 A. He lives in Auburn.</p> <p>13 Q. Does your wife have any brothers or sisters?</p> <p>14 A. No.</p> <p>15 Q. Are both of your parents still living?</p> <p>16 A. Yes.</p> <p>17 Q. Where do they live?</p> <p>18 A. Prattville.</p> <p>19 Q. What's your dad and your mom's name?</p> <p>20 A. Larry Pelham and Scottie, S-C-O-T-T-I-E.</p> <p>21 Q. How about your wife's parents. Are they</p> <p>22 still living?</p> <p>23 A. Yes.</p>	<p>1 A. Yeah.</p> <p>2 Q. How many you got?</p> <p>3 A. Probably 15.</p> <p>4 MR. WHITEHEAD: Okay. Roianne, can we</p> <p>5 have a gentleman-lady agreement</p> <p>6 that you'll send me a letter,</p> <p>7 listing all his cousins?</p> <p>8 MS. CONNER: Yeah. A list. It would</p> <p>9 be a whole lot easier.</p> <p>10 MR. WHITEHEAD: Yeah. Yeah.</p> <p>11 Q. How about your wife? Does she have any first</p> <p>12 cousins in the area as well? And if so,</p> <p>13 we'll do the same thing. We'll agree on the</p> <p>14 record, do the same thing with a list.</p> <p>15 A. She's got four.</p> <p>16 Q. Go ahead and give me their names real quick.</p> <p>17 A. I couldn't give you -- let's see. There's</p> <p>18 Brittany Jones.</p> <p>19 Q. Let me ask you this. Will you get with your</p> <p>20 wife and get back with Roianne and let me</p> <p>21 know?</p> <p>22 A. I can, yeah.</p> <p>23 Q. Is this your wife's first marriage?</p>

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- 1 A. It's her second marriage.
- 2 Q. Is her former husband, does he still live in
- 3 the area?
- 4 A. Yes.
- 5 Q. What is his name?
- 6 A. Christopher Keith Bailey.
- 7 Q. Does he live in Montgomery?
- 8 A. Yes.
- 9 Q. Mr. Pelham, give me your current home
- 10 address, please, sir.
- 11 A. 3803 Adams Place, Millbrook, 36054.
- 12 Q. How long have you been at that address?
- 13 A. A little over a year.
- 14 Q. Anybody besides you and your wife and your
- 15 step-children live at that address?
- 16 A. No.
- 17 Q. As best you can, in the last ten years, give
- 18 me a list of all the addresses that you've
- 19 had.
- 20 A. 2025 Briarwood Street, Prattville, Alabama,
- 21 36067, I believe.
- 22 Q. How long did you live there?
- 23 A. Six months.

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- 1 Q. And that was immediately preceding this
- 2 current address?
- 3 A. Right.
- 4 Q. Where did you live before that?
- 5 A. 18 -- I'm sorry. 1537 Westminster Drive,
- 6 Montgomery, 36117.
- 7 Q. How long did you live there?
- 8 A. About two years.
- 9 Q. Remember what your address was before that?
- 10 A. 1830 Windsor Downs Court, Montgomery, 36117.
- 11 Q. Remember how long you were there?
- 12 A. About three years.
- 13 Q. Can you remember your address before that?
- 14 A. 7101 Fair Oaks Court, Montgomery, 36117. Was
- 15 there about five years.
- 16 Q. Okay. Mr. Pelham, are you currently working?
- 17 A. Yes.
- 18 Q. Okay. Where are you working?
- 19 A. Carquest Distribution Center.
- 20 Q. How long have you been working for Carquest?
- 21 A. Three months.
- 22 Q. Is that the first job you've had since you
- 23 left working for the police department?

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- 1 A. Yes.
- 2 Q. How long did you work for the police
- 3 department, Montgomery Police Department?
- 4 A. Two years.
- 5 Q. Now, were you a detective with them the whole
- 6 time you were with them, or did you start out
- 7 as patrol?
- 8 A. No. I -- I was on third shift patrol.
- 9 Q. Just as far as your employment history with
- 10 Montgomery, let's just go into that. Do you
- 11 remember the month of the year that you
- 12 started?
- 13 A. November 2000 -- 2002.
- 14 Q. Okay. Started at third-shift patrol?
- 15 A. Right.
- 16 Q. How long were you on third-shift patrol?
- 17 A. A year and a half, approximately.
- 18 Q. All right. And you were promoted to
- 19 detective from third-shift patrol?
- 20 A. Yes.
- 21 Q. Do you remember the month and year when you
- 22 were promoted to detective, or at least your
- 23 best estimate?

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- 1 A. I couldn't tell you.
- 2 Q. Sometime in '04, I guess, if my math is
- 3 remotely right.
- 4 A. Yeah.
- 5 Q. Had you worked as a police officer before you
- 6 came to Montgomery anywhere?
- 7 A. No. No.
- 8 Q. When you were on third-shift patrol, did you
- 9 receive any interim promotions while you were
- 10 on third shift patrol other than some pay
- 11 raise?
- 12 A. Just merit raises, that's it.
- 13 Q. How many merit raises did you receive while
- 14 you were on third-shift patrol?
- 15 A. Two, I believe.
- 16 Q. Were you subject to any disciplinary actions
- 17 or anything while you were on third-shift
- 18 patrol?
- 19 A. No.
- 20 Q. Were you ever subject to any disciplinary
- 21 actions when you were a detective?
- 22 A. No.
- 23 Q. Mr. Pelham, what's your date of birth?

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6 (Pages 18 to 21)

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- 1 A. 12/28/79.
- 2 Q. So you're 26?
- 3 A. 25.
- 4 Q. 25. Yeah. Okay. What year did you finish
- 5 high school?
- 6 A. '97.
- 7 Q. Did you graduate from Prattville High?
- 8 A. No. I got my GED, actually, in '97 from
- 9 TSUM.
- 10 Q. All right. Where did you attend high
- 11 school?
- 12 A. Hooper Academy, Jeff Davis.
- 13 Q. Let me ask you this way. Where did you --
- 14 where did you go to the 9th grade?
- 15 A. Brewbaker.
- 16 Q. 10th grade?
- 17 A. Jeff Davis.
- 18 Q. Did you complete the 10th grade at Jeff
- 19 Davis?
- 20 A. I did.
- 21 Q. Okay. And did you go to Hooper Academy in
- 22 the 11th?
- 23 A. Actually, Hooper Academy was junior high.

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- 1 Q. Okay. Okay. So all of your high school that
- 2 you attended, you attended at Jeff Davis?
- 3 A. At Jeff Davis.
- 4 Q. What's the highest grade you completed at
- 5 Jeff Davis?
- 6 A. 10th, completed.
- 7 Q. Okay. So you began your 11th grade year at
- 8 Jeff Davis --
- 9 A. Right.
- 10 Q. But didn't complete it. All right. And then
- 11 you subsequently got your GED at Troy State?
- 12 A. Right.
- 13 Q. After getting your GED -- and I think you
- 14 said that was in '97 -- what was your first
- 15 job?
- 16 A. I believe it was Green Thumb Nursery off of
- 17 Troy Highway.
- 18 Q. How long did you work there?
- 19 A. A year and a half.
- 20 Q. What did you do there, just labor?
- 21 A. Landscape.
- 22 Q. And why did you leave Green Thumb Nursery?
- 23 A. Went to work at Montgomery Aviation out at

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- 1 Danley Field.
- 2 Q. So you already had the job lined up at
- 3 Montgomery Aviation when you left --
- 4 A. Right. Yeah.
- 5 Q. -- Green Thumb. How long did you work with
- 6 Montgomery Aviation?
- 7 A. Approximately two years.
- 8 Q. And why did you leave Montgomery Aviation?
- 9 A. Went to flight school in Ozark, Alabama,
- 10 George Wallace Community College.
- 11 Q. So you left Montgomery Aviation so you could
- 12 attend flight school?
- 13 A. Yes.
- 14 Q. And how long were you in flight school in
- 15 Ozark?
- 16 A. About a -- a year.
- 17 Q. Did you finish the school?
- 18 A. No, I did not.
- 19 Q. Okay. And why did you stop going to flight
- 20 school?
- 21 A. I joined the Army after flight school. Army
- 22 Reserve.
- 23 Q. What year are we at now?

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- 1 A. 2000. Can't be sure on that. Around 2000.
- 2 Q. And did joining the Army Reserve have
- 3 something to do with leaving flight school?
- 4 A. Not really. I left flight school; just
- 5 changed my mind altogether on what I wanted
- 6 to do.
- 7 Q. Okay.
- 8 A. Come back.
- 9 Q. But you joined the Army Reserve about the
- 10 same time you left flight school? Am I
- 11 understanding you?
- 12 A. Maybe two or three months after I left.
- 13 Q. All right. Once you got out of flight
- 14 school, did you have any of other job you
- 15 immediately left to go to?
- 16 A. I worked with my uncle off and on.
- 17 Q. Your uncle, where did he live?
- 18 A. In Montgomery. I don't know his address.
- 19 Q. What did you do for your uncle?
- 20 A. He owned a tire store, that labor -- labor --
- 21 just labor work, you know.
- 22 Q. Just working at a tire store?
- 23 A. Yeah.

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1 Q. All right. When you joined the Reserve, did
2 you join the Army Reserve?
3 A. Yes, I did.
4 Q. Did you have to leave and go do basic
5 training when you did that?
6 A. Yes.
7 Q. Where did you do your basic training?
8 A. Fort Leonard Wood, Missouri.
9 Q. And how long did it take you to complete your
10 basic training?
11 A. Nine weeks.
12 Q. Once you completed basic training, did you
13 have to go do some additional full time
14 training?
15 A. I was supposed to -- was supposed to. I
16 broke my knee and was discharged, medical
17 discharge from the Army.
18 Q. Okay. You did that during basic training?
19 A. Uh-huh, yes.
20 Q. Even though I tell you, I don't catch it
21 myself.
22 All right. So you were given a general
23 medical discharge from the military?

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1 A. Right, yes.
2 Q. All right. So you came back from Missouri,
3 and what did you do then?
4 A. I cut grass. Started lawn service. Cut
5 grass for about a year and a half.
6 Q. All right. Other than cutting grass, did you
7 have any other jobs between, before you
8 started with the Montgomery Police
9 Department?
10 A. No.
11 Q. All right. So you got out of basic, cut
12 lawns for about 18 months, and then started
13 with Montgomery Police Department?
14 A. Yes.
15 Q. All right. Mr. Pelham, are you a member of
16 any kind of civic, or social, fraternal
17 organizations, Rotary, Kiwanis Club, anything
18 like that?
19 A. No.
20 Q. Go to church?
21 A. Yes.
22 Q. Where do you go to church?
23 A. Forest Park Baptist Church, Frazier every now

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1 and then.
2 Q. In the last six years, have you attended any
3 other churches besides Forest Park or
4 Frazier?
5 A. In the last six years?
6 Q. Yeah.
7 A. I don't know. Maybe -- maybe Vaughn Road.
8 Q. Vaughn Road Church of Christ?
9 A. It's a Baptist church.
10 Q. Baptist Church.
11 A. I couldn't be sure.
12 Q. All right. Ever been arrested for any
13 reason?
14 A. I was arrested in high school for public
15 intoxication.
16 Q. All right. How old were you when that
17 happened?
18 A. 18.
19 Q. Did they handle that in juvenile court, city
20 court, district court?
21 A. City court.
22 Q. Do you remember how the charge was
23 adjudicated? Did you plead guilty, do

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1 pretrial to version, or do you remember?
2 A. I can't remember. I know I pled guilty.
3 Paid a fine. That was pretty much it.
4 Q. All right. Is that the only time you've ever
5 been arrested?
6 A. Yes.
7 Q. You ever filed for bankruptcy?
8 A. Yes.
9 Q. When did you file for bankruptcy?
10 A. Just a month ago.
11 Q. All right, sir. Filed Chapter 7 or Chapter
12 13?
13 A. 13.
14 Q. Do you know if your plan has been confirmed
15 yet?
16 A. No. It's a -- confirmation is on the 17th.
17 Q. 17th of October?
18 A. Yeah.
19 Q. All right. Mr. Pelham, the reason we're here
20 is to talk about an incident that happened
21 involving the arrest of a man named Chad
22 Hogan back on March 30th of 2005. I'm going
23 to ask you, obviously, some questions

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<p>1 regarding particular detail. But it might be 2 easier just to start out just by asking to 3 recite as best you can, what your first 4 memory is of that night and who you spoke to 5 and how the night developed from the moment 6 you first heard about the burglary call at 7 Arnaud Meats that night. And just if you 8 would, just tell me everything you remember 9 about it.</p> <p>10 A. All right. I was sitting at any computer 11 eating a taco. The call went out -- or the 12 alarm went out to Arnaud's Quality Meats. It 13 was storming real bad. I didn't think 14 nothing of it. The alarm had been going off 15 all night, other alarm.</p> <p>16 Q. Keep talking. I'm listening. I'm just going 17 to close these blinds.</p> <p>18 A. And a K-9 officer, Officer Gordon, got on the 19 radio, advised he was the first one -- or he 20 was the first one to respond to the scene. 21 Advised he saw a vehicle in the parking lot. 22 I can't remember what -- what kind of vehicle 23 it was -- with a few -- two or three black</p>	<p>1 A. While all this unfolded, I about that time -- 2 well, when the officer said that the window 3 had been busted out, I had left the police 4 department, started in that direction.</p> <p>5 Q. Let me stop you. You talked to either 6 Officer Fike or Forbus on the radio before 7 you got to the scene; is that correct?</p> <p>8 A. No. I heard them on the channel one radio 9 saying that the window had been busted out.</p> <p>10 Q. But you didn't speak with them at that point?</p> <p>11 A. But I didn't speak with them at that point.</p> <p>12 Q. I'm sorry. Continue.</p> <p>13 A. Once I heard that, I got in my car. Started 14 that way. While I was on my way to the 15 business, that's when the -- the suspect 16 vehicle crashed into a -- a fence.</p> <p>17 About that time -- not long after that, 18 I arrived at Arnaud's Quality Meat and made 19 contact with Officer Forbus and Fike. And I 20 pulled up, just so happened to pull up on the 21 right side in front of the window, and walked 22 around to the front of the business. Officer 23 Forbus and Fike had advised me that it didn't</p>
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<p>1 males inside. Stated he pulled into the 2 parking lot, and the vehicle drove off 3 down -- headed down Wares Ferry Road, I 4 believe, or they cut through the trailer park 5 behind the store, headed to Wares Ferry 6 Road. He -- he -- he then advised he was 7 following the car, and there were a couple of 8 other units that said that they were en route 9 to the store.</p> <p>10 And I believe the next unit on the scene 11 was Officer Fike or Officer Forbus. I'm not 12 -- not to sure. And they advised that the 13 window on the right side of the business had 14 been busted out. At that time, Officer 15 Gordon gave his whereabouts and stated that I 16 believe he stated he was initiating a traffic 17 stop, and he got some other units with him to 18 assist him. At that time, the vehicle was on 19 Wares Ferry Road, refusing to stop. And that 20 ended up -- the vehicle he was pursuing ended 21 up, I believe, running into a fence or a tree 22 at Pelzer Avenue and Wareingwood Avenue.</p> <p>23 Q. Yes, sir.</p>	<p>1 look like anything had been -- been tampered 2 with. Didn't look like anything had been 3 gone. And they had already -- they had 4 requested a key holder to come out. The 5 owner of the business to come out and verify 6 if -- if there had been anything missing or 7 if there had been a burglary. At that time 8 Anthony Arnaud, the owner of Arnaud's Quality 9 Meat, pulled up; and I made contact with him, 10 and asked him to go into his store and 11 inventory it. See if anything had been 12 missing. He went inside, come back out and 13 told me that he left the window open, because 14 the window wasn't broken. He left it broken 15 because the -- his air conditioner was broke 16 and he didn't want it to be real hot the next 17 morning. Had something going on early the 18 next morning. Some kind of breakfast or 19 something. Didn't want it to be real hot so 20 he left the window open. And nothing was 21 missing. He said he had some cash laying on 22 the counter, it was still there. He believed 23 nobody -- nobody had gotten in at that time.</p>

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9 (Pages 30 to 33)

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1 I got on my radio, made contact with Sergeant
2 Johnson, with my supervisor, Lieutenant Cook,
3 let him know that there wasn't a burglary and
4 that the owner had left the window up. And
5 he advised me to make contact with third-
6 shift sergeant, Sergeant Johnson, to let him
7 know that there was -- was no burglary. So I
8 then called on my radio Sergeant Johnson and
9 let him know what the owner had told me, that
10 he had left the window open, and nothing was
11 missing, didn't think anybody got in.

12 At that time, Sergeant Johnson, he got
13 irate with me like I didn't want -- didn't
14 want to work the case. Like I was trying to
15 push it off and didn't want to work it.
16 Said, you mean to tell me we got a -- we got
17 a dog bite and no burglary? And I said,
18 Well, that's what the owner is advising me.
19 You know, he left the window open. And it's
20 raining, you know, raining real hard. If
21 anybody had got in, there would be foot
22 prints all over the place. Didn't hear
23 anything back from him at that time.

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1 I'd heard -- while all this was going
2 on, I was scanning channel one radio
3 traffic. I'd heard they had one or two
4 subjects in custody. I don't know if it was
5 three or four total, but one or two was in
6 the ditch, and the water level was real
7 high. He was in the ditch I guess swimming,
8 trying to get away from officers. At that
9 time, I had Mr. Arnaud secure his business
10 and follow me back to police headquarters.
11 At which time we went to -- we went to police
12 headquarters and Mr. Hogan and another --
13 another black male subject was transported to
14 headquarters, and I believe one or two other
15 ones got away.

16 Once I got to headquarters, I separated
17 the two, Mr. Hogan and another -- another guy
18 that was with him. And there might have been
19 three, I can't remember. Anyway, I separated
20 how many of them there was and began
21 questioning them, you know, as to what they
22 were doing in the parking lot, what went on.
23 Mr. Hogan was the first -- the first subject

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1 that I talked with. He said that him and his
2 buddies had been at the pool hall -- I
3 believe it's called The Break Room -- right
4 there at Lagoon Park Shopping Center. Said
5 they were playing pool. When they got --
6 when they left, they were heading over --
7 they were going to a friend's house. They
8 pulled -- he said they had pulled into the
9 parking lot of Arnaud's Quality Meats because
10 it was raining so hard. They couldn't see --
11 the driver couldn't see out of the
12 windshield. While they were there, one of
13 them lit a -- a joint or a blunt, or one of
14 the two. And they sat in the parking lot.

15 Q. Mr. Pelham, just to stop you for a second.
16 Just to make the record clear, when you say a
17 joint or blunt, you mean --

18 A. Marijuana.

19 Q. Marijuana.

20 A. Right.

21 Q. Go ahead. I'm sorry.

22 A. So they sat in the parking lot and were
23 smoking marijuana. And he then stated that

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1 one of his -- one of his buddies saw what he
2 believed to be a K-9 vehicle pull into the
3 parking lot, which was Officer Gordon. They
4 then -- they then left the parking lot. And
5 he said, you know, they were scared that they
6 were going to get caught with smoking the
7 marijuana. And he stated that's when they
8 left and ran from the K-9 officer and hit the
9 fence. That's how he ended up at
10 headquarters.

11 I then talked with the other subject,
12 and he stated the same thing. They were at
13 the pool hall and left and couldn't see. So
14 they pulled in the parking lot smoking
15 marijuana. Saw the K-9 officer and left.
16 That's how he ended up at headquarters. And
17 then -- I think there was a third one. I
18 can't be too sure.

19 Anyway, the stories panned out. I
20 even -- I even called The Break Room, the
21 pool hall and talked with -- I believe it was
22 the -- the door -- the door manager or
23 whatever you want to call it. I guess

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10 (Pages 34 to 37)

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<p>1 somebody who checks your ID or something like</p> <p>2 that. And he stated that they were in</p> <p>3 there. They'd just left, you know, a little</p> <p>4 while ago.</p> <p>5 Q. When he said little while, do you remember</p> <p>6 how he defined little while?</p> <p>7 A. I can't remember that. He might not have</p> <p>8 even said a little while ago. He -- he said</p> <p>9 that they had recently left. They were</p> <p>10 there.</p> <p>11 Q. Did you write his name down on any reports</p> <p>12 anywhere?</p> <p>13 A. I'm sure it's in the case file.</p> <p>14 Q. Go ahead. I'm sorry.</p> <p>15 A. I then let my supervisor know, Lieutenant</p> <p>16 Cook, that, you know, I didn't think we were</p> <p>17 going to have a burglary. These guys'</p> <p>18 stories panned out. I -- I -- after I talked</p> <p>19 with the last subject, find -- find out his</p> <p>20 side of the story, I then went to the Anthony</p> <p>21 Arnaud and asked him again, you know, you</p> <p>22 sure there's, you know, nothing missing? At</p> <p>23 that time, you know, he's in police</p>	<p>1 Q. Okay. Go head.</p> <p>2 A. Let him know that the subject -- you know,</p> <p>3 Mr. Arnaud didn't see anything missing. Said</p> <p>4 he left the window open. His store wasn't</p> <p>5 burglarized. And the subjects all were</p> <p>6 separated and had a -- a similar story. I --</p> <p>7 I told Officer Gordon that I needed -- I</p> <p>8 would need a statement from him as to what he</p> <p>9 saw when he pulled into the parking lot. So</p> <p>10 he typed up a statement.</p> <p>11 Q. Let me stop you, again. You're telling</p> <p>12 Officer Gordon this at the police department</p> <p>13 in person, this conversation you've just</p> <p>14 described, or was this on the radio?</p> <p>15 A. I don't remember. It could have been on --</p> <p>16 he was on his way back to the police</p> <p>17 department. At -- and it was either on the</p> <p>18 radio or when he got back, I let him know it.</p> <p>19 Q. All right. I'm sorry. Go ahead.</p> <p>20 A. At that time he -- I believe he got on my</p> <p>21 computer and typed up a -- a statement. And</p> <p>22 when he was done, he gave it to me. And I</p> <p>23 read it, and the elements -- the elements for</p>
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<p>1 headquarters. And he said no. He just</p> <p>2 wanted to go home. He didn't want to put the</p> <p>3 wrong guy in jail or put somebody in jail for</p> <p>4 something they didn't do.</p> <p>5 So I called my Lieutenant Ron Cook, and</p> <p>6 he advised my to see -- wait -- wait to get a</p> <p>7 statement from the officers. You know, to</p> <p>8 see if they -- to see if they saw enough, you</p> <p>9 know, to charge -- to charge these guys with</p> <p>10 a burglary. You know, did they see them</p> <p>11 coming out of the window or carrying</p> <p>12 something that maybe Mr. Arnaud didn't notice</p> <p>13 was missing.</p> <p>14 So I waited -- waited for the officers</p> <p>15 to get there. And Officer Gordon had typed</p> <p>16 up a statement. I let him know that, you</p> <p>17 know, the owner didn't -- didn't notice</p> <p>18 anything was missing. The subjects that were</p> <p>19 in custody --</p> <p>20 Q. Let me to stop you. You said you let him</p> <p>21 know. Who are you speaking of when you say</p> <p>22 you let him know?</p> <p>23 A. Officer Gordon.</p>	<p>1 burglary wasn't there. He said that he had</p> <p>2 pulled into the -- well, the alarm call had</p> <p>3 went out. He had pulled into the parking lot</p> <p>4 and observed a -- the suspect's vehicle, one</p> <p>5 of the door close -- one of the doors on the</p> <p>6 vehicle closed, and drive away from the</p> <p>7 business. Which, you know, the elements for</p> <p>8 the burglary weren't there. At which time I</p> <p>9 let my supervisor, Lieutenant Cook, know that</p> <p>10 his statement wasn't sufficient.</p> <p>11 At that time Lieutenant Cook called</p> <p>12 Officer Gordon's supervisor, Lieutenant</p> <p>13 Caulfield, K-9 supervisor, let him know his</p> <p>14 officer's statement didn't have the elements</p> <p>15 of burglary. And Lieutenant Caulfield told</p> <p>16 Lieutenant Cook that he would -- he would</p> <p>17 talk to his officer and get another</p> <p>18 statement.</p> <p>19 Q. Let me stop you right there. You said you</p> <p>20 heard the conversation between Lieutenant</p> <p>21 Caulfield and Lieutenant Cook?</p> <p>22 A. That -- that conversation.</p> <p>23 Q. Were they both in person talking to each</p>

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11 (Pages 38 to 41)

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1 other, or was this something over the walkie-
2 talkie or --
3 A. They were -- it was over the I-Link, the
4 radios you can --
5 Q. So you could hear the conversation that's
6 incoming?
7 A. Right. Kind of like a Nextel, you can --
8 Q. I gotcha. Okay. Go ahead.
9 A. At that time, Officer Gordon -- I mean, I'm
10 assuming Lieutenant Caulfield called Officer
11 Gordon because Officer Gordon said he was
12 going to do another statement. He then typed
13 another statement. Said that he had pulled
14 into the parking lot, observed a vehicle in
15 the parking lot, and a black male standing
16 next to the vehicle by the window, I believe.
17 Q. I'm going to stop you for a second. What did
18 the first statement say as opposed to the
19 second statement? What was the major
20 difference between the two?
21 A. The first statement said I pulled into the
22 parking lot, observed a vehicle which
23 passenger -- I observed a vehicle in the

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1 parking lot. The passenger's door then
2 closed and the vehicle drove off. The second
3 statement said, I pulled in the parking lot,
4 observed a vehicle, and a black male standing
5 outside the vehicle next to the window, which
6 was believed to be the point of entry. And
7 that was the only two things that changed.
8 Q. All right.
9 A. At that time, Officer Gordon gave me a
10 statement. I read the statement. And still,
11 the elements weren't there. It was a small
12 twist getting closer to -- to the elements.
13 But it -- it wouldn't -- wouldn't support
14 burglary.
15 So then I called Lieutenant Cook, let
16 him know the statement, you know, the
17 elements still weren't there. And -- and I'm
18 assuming he called Lieutenant Caulfield
19 then. I -- I didn't hear that conversation.
20 However, he said that Officer Gordon was --
21 was going to come back and fix it. So
22 Officer Gordon come back and did a third
23 statement. And the third statement, I had

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1 pulled into the parking lot -- I had pulled
2 into the parking lot and observed a vehicle
3 in the parking lot with a black male coming
4 from the window -- coming from -- coming from
5 the window of the business, enter the vehicle
6 and drive off. That was the only thing that
7 was changed there. Still after the third
8 time, I read the statement. Elements weren't
9 there.
10 Q. Mr. Pelham, let me stop you again. I
11 apologize. Just so I can make sure I
12 understand this. Okay. You're saying that
13 Officer Gordon wrote three different
14 statements?
15 A. Typed three different statements.
16 Q. Okay. And tell me again just the transition,
17 what was in the first statement, just what
18 got changed in the second statement, what you
19 say got changed in the third statement. What
20 was the difference between the three
21 statements?
22 A. The first statement said he saw the vehicle
23 in the parking lot, a door closed, the

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1 vehicle the drove off. The second statement,
2 the difference was he saw the vehicle in the
3 parking lot, a black male standing outside
4 the vehicle next to the window, got into the
5 vehicle and the vehicle drove off. Third
6 statement, difference was, he pulled into the
7 parking lot, saw the vehicle in the parking
8 lot, black male subject coming from the
9 window of the business. Got into the vehicle
10 and the vehicle drove off.
11 Q. Okay. So you're saying the final statement
12 said that he actually saw the black male
13 coming from the window?
14 A. Coming from the window.
15 Q. I'm sorry. Keep going.
16 A. At that time I read it, elements weren't
17 there. I can't remember how it was worded
18 but it -- it wasn't coming out of the window,
19 you know.
20 Anyway the elements weren't there. So I
21 then let Lieutenant Cook know.
22 Q. Let me ask this too because this is as good a
23 place as any. Because you said a few times

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12 (Pages 42 to 45)

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<p>1 you didn't think the elements were there. On</p> <p>2 the third statement why did you think the</p> <p>3 elements weren't there on that final</p> <p>4 statement?</p> <p>5 A. Well, the way it was -- the way it was</p> <p>6 worded, observed a black male coming from the</p> <p>7 window. The way he had it worded was not</p> <p>8 coming out of the window but coming from the</p> <p>9 direction of the window. You know, not</p> <p>10 climbing out of the window but coming from</p> <p>11 the window. So that's, you know elements</p> <p>12 aren't there. And in the back of my mind</p> <p>13 being the third statement.</p> <p>14 Q. Okay. And let me ask you this one thing.</p> <p>15 I'm asking you as an officer what you would</p> <p>16 think if in light of the fact that a burglar</p> <p>17 alarm had sounded, that I believe was</p> <p>18 signaled by a motion detector; is that</p> <p>19 correct?</p> <p>20 A. Yeah.</p> <p>21 Q. And in light of the fact that they were --</p> <p>22 I'm going to give you a hypothetical. Had</p> <p>23 you seen a vehicle in the area and you'd seen</p>	<p>1 storming real, real -- I mean it was a</p> <p>2 terrible storm. The alarm had gone off once</p> <p>3 before prior to this -- this incident.</p> <p>4 Q. Do you remember what sensor had tripped the</p> <p>5 alarm before?</p> <p>6 A. The same motion.</p> <p>7 Q. Is same motion sensor?</p> <p>8 A. Right. And -- and I fail to mention</p> <p>9 Mr. Arnaud stated -- he does serve meat. He</p> <p>10 stated that he was embarrassed to say, but he</p> <p>11 had big rats. And goes out there all the</p> <p>12 time because big rats set off his motion</p> <p>13 detector. However, we were answering alarm</p> <p>14 calls at night due to the weather.</p> <p>15 Now, as far as a vehicle leaving the</p> <p>16 area and -- and, you know, having the gun and</p> <p>17 a ski mask and all that, yes, you know,</p> <p>18 that's -- looks like somebody is up to no</p> <p>19 good. But, you know, it takes three</p> <p>20 statements to -- to even get remotely close</p> <p>21 to coming from the window. I mean, I knew,</p> <p>22 you know, that was my job to -- are the</p> <p>23 elements there? You know, did this burglary</p>
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<p>1 someone coming -- I'm going the use your</p> <p>2 words -- from the window -- not necessarily</p> <p>3 out of the window but from the window, you</p> <p>4 then approached that vehicle and they take</p> <p>5 off and don't stop, and then you subsequently</p> <p>6 find a gun, a ski mask, and a flashlight in</p> <p>7 the car, would that not altogether add up to</p> <p>8 probable cause to believe that a burglary had</p> <p>9 occurred?</p> <p>10 A. Oh, yeah, yeah, it would.</p> <p>11 MR. NELMS: Object to the form.</p> <p>12 Q. We'll do that a few times. You can still</p> <p>13 answer.</p> <p>14 MS. CONNER: You can answer. But, you</p> <p>15 know, just let them do their</p> <p>16 thing.</p> <p>17 THE WITNESS: Okay.</p> <p>18 MS. CONNER: Okay. You can answer.</p> <p>19 THE WITNESS: Okay.</p> <p>20 MS. CONNER: Do you remember the</p> <p>21 question?</p> <p>22 Q. I'll repeat it if you need to.</p> <p>23 A. Had, in fact, it not been -- I mean, it was</p>	<p>1 happen? And, you know, I had the owner</p> <p>2 telling me nobody got in. Nothing is</p> <p>3 missing. I left the window up, you know.</p> <p>4 You know, they had they had a couple of black</p> <p>5 males in the car with a gun, some dope, and a</p> <p>6 ski mask. There was no burglary.</p> <p>7 Q. Weren't there some flower pots or something</p> <p>8 on the windowsill that were knocked off?</p> <p>9 A. There -- there were. I failed to mention</p> <p>10 that as well.</p> <p>11 MR. NELMS: Object to the form.</p> <p>12 A. There were some -- there were two or three</p> <p>13 flower pots and like a -- some type of</p> <p>14 figurine like a porcelain figurine. When I</p> <p>15 pulled up, they were laying on the ground up</p> <p>16 under the window. I asked when -- when</p> <p>17 Officer Forbus and Officer Fike told me it</p> <p>18 didn't look like anybody got in, I asked</p> <p>19 them, I said, well, what is that right</p> <p>20 there? Did that -- did that come from the</p> <p>21 window? And they said yeah, that was on the</p> <p>22 windowsill. We moved it to get in. And it</p> <p>23 wasn't broken laying on the ground. It was</p>

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13 (Pages 46 to 49)

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1 picked up and placed on the ground.
2 Q. Are Officer Forbus and Officer Fike, are they
3 K-9 officers?
4 A. No, they're third-shift patrol officer.
5 Q. So they're just normal patrol?
6 A. Right
7 Q. Go ahead, I'm sorry.
8 A. They had said that it was moved to be put --
9 it was moved to get -- to get in so the
10 building could be cleared. So they could
11 clear the building, make sure nobody was in
12 there.
13 Q. So they told you that they took the thing
14 off, the plants off or the figurine?
15 A. I don't know if they -- it seems like Fike --
16 Fike told me that -- there was a lot of --
17 there was a lot of units there, due to the
18 pursuit and all. And it seems -- I want to
19 say that K-9 -- there was a K-9 officer that
20 was actually the first officer in the
21 business because they clear it with their dog
22 first. You know, they're not -- they don't
23 normally send an officer in there. If they

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1 got a dog, they'll send their dog in first.
2 And it seemed like he said they put it on the
3 ground and they sent the dog in. And they
4 followed behind him. I -- I don't know how
5 he worded that.
6 Q. Did he say he saw them -- that happen or he
7 was just assuming?
8 A. He was just assuming.
9 Q. You don't know what he based that statement
10 on?
11 A. I don't know. He just said that it was put
12 down on the ground so the building could be
13 cleared. The business could be cleared.
14 Q. But you didn't clarify with him about how he
15 obtained that information?
16 A. He was there. I'm assuming he saw it.
17 Q. Okay. But you didn't ask him if he saw it?
18 A. I can't remember if I did or not.
19 Q. Okay. I'm sorry. Go ahead.
20 A. After the third statement was written and I'd
21 read it, I'd called Lieutenant Cook. Let him
22 know, you know, this is the third statement.
23 You know, I don't feel comfortable with

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1 this. And the elements aren't there. I mean
2 probable cause is there. Your reasonable
3 suspicion is there. He then said, well, let
4 me call Caulfield. So he called Lieutenant
5 Caulfield and Caulfield told -- this is
6 coming from Lieutenant Cook. He told me that
7 Caulfield told him his officer was just
8 having an articulation problem. Having a
9 problem putting -- putting what he saw on
10 paper.
11 Said he was just having an articulation
12 problem putting down on paper what he saw.
13 At which time, he said just the -- you know,
14 the burden lies on K-9. You know just work
15 the burglary, and K-9 will be the ones that,
16 you know, testify to what they saw. You
17 know, the burden -- burden lies on them. And
18 I asked, well -- I asked Lieutenant Cook,
19 well -- who, you know, who do I charge with
20 burglary. And he calls Lieutenant Caulfield
21 and asks him, and he says, the one that's
22 been bitten. Usually, we charge, you know --
23 Q. Let me stop you again, too. Are we back on

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1 the Southern Link walkie-talkie again or how
2 is this conversation occurring between
3 between Caulfield and Cook?
4 A. I don't remember. I think he called him on
5 the telephone that time.
6 Q. Well, how do you know what Lieutenant
7 Caulfield said to Lieutenant Cook?
8 A. I was sitting in his office. You know, he --
9 he said, which one do we charge? And when he
10 got off the phone he said the one that's been
11 bitten.
12 Q. Lieutenant Cook said that?
13 A. Right.
14 Q. Okay. Are you saying that Lieutenant
15 Caulfield told Lieutenant Cook to charge the
16 one that's been bitten?
17 A. Right. He asked -- I asked Lieutenant Cook,
18 I said, which one do I charge with burglary.
19 He said, well, I don't know. Let me call
20 Caulfield. So he call Caulfield. Says, hey,
21 which one of these guys do we charge? Of
22 course, I didn't hear that. He hangs up the
23 phone. He says the one that's been bitten.

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14 (Pages 50 to 53)

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1 Q. Okay. But you didn't hear Lieutenant
2 Caulfield say the one that's been bitten in
3 that conversation?
4 A. No, I did not.
5 Q. Go ahead. I'm sorry.
6 A. At that time, I went -- I was on the way back
7 to my office to do the paperwork, you know,
8 finish the case file. And, of course, I'm
9 getting -- I'm getting a lot of heat from K-9
10 and -- and patrol officers. And there was
11 something that happened previously I
12 didn't -- I didn't have any knowledge about
13 where they had made a mistake or something.
14 I don't -- I don't know all of that. But
15 they -- they told me that, you know, they --
16 they needed to charge this guy to justify the
17 bite. They were already in hot water from
18 something that happened previously. And --
19 Q. You said they told you. Who are you speaking
20 of when you say they?
21 A. There was a few of them.
22 Q. And as a matter of fact, Mr. Pelham, let me
23 put it this way. It might be easier just

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1 because there are different names involved in
2 this. As much as we can, let's try to avoid
3 pronouns. Rather than he and she and they,
4 let's try to call everybody out by name as
5 we're speaking. It will make the record a
6 lot more clear.
7 A. Okay. K-9 Officer Mora? I don't know how to
8 pronounce his name.
9 Q. Can you spell it?
10 A. M-O-R-A, I guess. M-O-R-A. Lieutenant
11 Caulfield made a comment about justifying the
12 dog bite. And we got to -- we got to charge
13 this guy.
14 Q. Where did that conversation occur between you
15 and Lieutenant Caulfield, your --
16 A. It was in the hallway of the detective
17 division by the copy machine.
18 Q. Did anybody else hear that conversation?
19 A. We were -- we were as a group. It was
20 being -- it was kind of -- it was myself,
21 Lieutenant Cook, Caulfield, Frank Koscho, who
22 is another detective, the K-9 officer Mora
23 and some other one. I can't -- I don't

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1 recall their names. I -- I don't believe I
2 knew their names, even when I was working
3 there. But it was kind of a -- I mean
4 everybody standing around in the same area
5 conversation type thing.
6 Q. But you're saying they would have heard
7 Lieutenant Caulfield tell you that you needed
8 a charge to justify the dog bite?
9 A. Oh, yeah.
10 Q. All right. Go ahead.
11 A. There was two other officers. I don't
12 know -- I know they were K-9 officers that
13 they kept bringing up how just previously
14 they -- they had -- one of their dogs had bit
15 somebody on Alabama State's Campus and they
16 were in trouble for it because they shouldn't
17 have put the dog on him or something like
18 that. And they needed to justify this bite,
19 so they wouldn't be in any deeper trouble
20 than they were in. I told -- and I didn't --
21 I wasn't talking -- I was talking to
22 everybody. You know, I said that I didn't
23 feel comfortable with it. And, you know, it

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1 wasn't there. This burglary didn't happen,
2 you know, they had air tight -- you know,
3 everything they said was -- was exactly the
4 same even after they were separated and --
5 the suspects when I say they.
6 Lieutenant Cook had told me, you know,
7 don't worry about it. The burden lies on
8 K-9. They're the ones that's got to testify.
9 I said, well, you know, I'm the case agent.
10 I got to go to court -- go to court on it. I
11 got to testify to being the case agent. He
12 was getting a lot of heat from Caulfield. So
13 he said go ahead, you know, do the case -- do
14 the case file.
15 So I go into my -- or my -- I go into
16 my -- one of my other supervisors' office
17 where Anthony Arnaud is sitting. And he
18 says, he's begging me to let him go home.
19 And I tell him, well just hang tight. I'll
20 be with you in just a minute, and we'll get
21 everything wrapped up. So I go to my
22 office. I do -- do a little paperwork. I
23 process Mr. Hogan. fingerprinted him.

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15 (Pages 54 to 57)

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1 photographed him. Got -- got some -- some
2 information on him as to address, where he
3 works, that type of thing. And then I went
4 back to Mr. Arnaud. I -- after I had
5 processed Mr. Hogan, I prepared the burglary
6 warrant. And was getting ready to take
7 Mr. Arnaud down to the warrant clerk's office
8 to secure the warrant against Mr. Hogan. And
9 at which time he said, listen. Just show me
10 where to -- where to go and -- so I can get
11 out of here. So I took him to the warrant
12 clerk's office. He secured the warrant
13 against Mr. Hogan for burglary.

14 And after the warrant was finished, I
15 went down to the warrant clerk's office, got
16 the warrant, executed it, transported
17 Mr. Hogan to the county jail, and did my
18 daily activity report. Whenever you arrest
19 somebody, just put the details of the -- what
20 happened and what you charged him where.
21 That's pretty much it.

22 Q. All right. You said earlier that Officer
23 Gordon typed out three separate statements.

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1 Do you allege that he said anything false in
2 the statements?

3 A. After the first one, yes.

4 Q. What do you say was false?

5 A. Well, on the -- and I have a copy of the
6 tape -- the tape, our dispatch tape. When he
7 pulled into the parking lot, you know, he
8 said just what he saw see. 150, I believe is
9 his unit number. 150, I'm pulling into the
10 parking lot. There's a vehicle in the
11 parking lot. Subject just closed the door of
12 the vehicle, drove off. That's just what he
13 saw.

14 And I knew then before I got to the
15 business, based on what he saw, we were
16 either going to have to get a confession out
17 of Mr. Hogan or his friends or some kind of
18 property missing from the business. Or, you
19 know, maybe an identifiable witness.

20 Q. On the tape transcript, did he say that's all
21 I saw or --

22 A. He said --

23 Q. -- did he simply say I saw someone getting in

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1 the car?

2 A. He said 150, I -- I'm pulling into the
3 parking lot of the business now. There's
4 a -- I observed a blue or a -- the vehicle.
5 I forgot the description. I observed the
6 passenger side door close and the vehicle is
7 now leaving heading towards wherever.

8 You know, had he said -- it could have
9 been a different story had he said 150, I'm
10 pulling into the parking lot; there's black
11 male subject coming from the window or, you
12 know, standing outside the vehicle.

13 Q. Is it possible that he could have seen that,
14 just not informed dispatch of it?

15 MR. NELMS: Object to the form.

16 MS. CONNER: You can answer.

17 A. I guess anything's possible.

18 Q. Okay. Go ahead.

19 A. I mean -- I mean, I could have -- I mean,
20 either way -- either way Mr. Hogan was
21 getting charged with burglary. I mean
22 that -- you know, I'm -- I'm a two-year
23 veteran of the police department. You know,

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1 the way -- the way the rank structure is, you
2 know, you do something you're not -- you do
3 something -- you don't do something you're
4 told to do, you know, you pretty much go find
5 you another job.

6 Q. Yes, sir. But let's just stick to the
7 statements right now, though, okay? I'm just
8 trying to figure out what, if anything, you
9 alleged was a false statement in the
10 complaints; and if so, what evidence you have
11 to support your claim that they're false.
12 That's all I'm trying to get into right now.

13 A. Okay.

14 Q. Other than the fact that he didn't state all
15 the details in his statement to dispatch. Do
16 you have any other evidence that the
17 statements he made in the allegations he made
18 in his statements were false?

19 MR. LEWIS: Object to the form.

20 A. He also didn't state them on paper. And his
21 written statement or his typed statement, not
22 only did he not state them the first time,
23 but he didn't state them the second time.

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16 (Pages 58 to 61)

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1 Also, I -- I even asked in he could
2 identify who he saw. He couldn't identify.
3 So, you know, we're charging this guy just
4 because he's got dog bites on him.
5 Q. When did you ask Officer Gordon if he could
6 identify the --
7 A. It was between one of the statements he had
8 wrote. I think it was after the second one
9 after I realized that the elements weren't
10 there.
11 Q. Okay. Tell me as best you can remember
12 specifically what you asked him regarding
13 identification of the person he saw coming
14 from the window?
15 A. I read a statement. I said, This is it?
16 That's all you saw? You know, what -- I
17 think I might have asked him, you know, what
18 he looked like, what was he wearing. He said
19 he didn't know, couldn't remember, something
20 like that. Then I just come out and said,
21 you know, can you identify him? Can you
22 identify the guy that came from -- from the
23 window. He said no. He just saw a black

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1 male coming from the window.
2 Q. Did you ask him if he could distinguish the
3 different clothing that the guys were
4 wearing?
5 MR. NELMS: Object to the form.
6 A. Yes.
7 Q. What did he say?
8 A. He said they were all wearing dark clothing,
9 I believe. Or it was dark, it was raining
10 real hard, something to that effect that he
11 couldn't -- he couldn't tell.
12 Q. Was Mr. Hogan wearing dark clothing?
13 A. I believe all of them were. I can't
14 remember.
15 Q. You said that Officer Gordon told you that he
16 could not identify the person coming from the
17 window. Did you ever have any further
18 discussions with Officer Gordon about that?
19 MR. NELMS: Object to the form.
20 A. I don't recall if I did or not.
21 Q. All right. Any other evidence that you have
22 that Officer Gordon fabricated some of the
23 allegations in his final statements?

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1 MR. LEWIS: Object.
2 MR. NELMS: Object to the form.
3 Q. And if I misunderstand you, I apologize. I
4 thought you said you were stating that he
5 fabricated some of the allegations in his
6 statements. Did you not say that?
7 A. Yeah.
8 Q. Okay.
9 A. Yeah. He was -- I mean, he was told by a
10 supervisor to change his statement, you know,
11 as to what he saw. So, you know, it didn't
12 come from him.
13 Q. I mean, you said a supervisor told him to
14 change his statement as to what he saw or to
15 articulate what he saw.
16 A. Maybe -- I mean, you know, articulation --
17 Q. Well, there's a --
18 A. -- is a broad statement. I mean --
19 Q. Would you agree there's a major difference
20 between with those two orders --
21 MR. NELMS: Object to the form.
22 Q. -- change what you saw and articulate what
23 you saw better?

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1 MR. NELMS: Object to the form.
2 Q. Would you agree there's a major difference
3 between those two orders?
4 A. Oh, yeah. There's a difference.
5 Q. Okay.
6 A. But, you know, how that conversation went
7 down, I don't know, because I didn't hear
8 it.
9 Q. Then how did you base the statement that an
10 officer told him -- a supervisor told him to
11 change his statement if you didn't hear the
12 that order given?
13 A. Well, change it and/or articulate it. And
14 after the second one was written, it still
15 wasn't good enough. So here comes a third
16 one and just -- it's like day and night, you
17 know. You saw something or you didn't. I
18 saw a black guy coming from the window or I
19 saw a white guy coming from the window. You
20 know, that was my job to investigate
21 something. Do we have a charge, or do we
22 not. You know, I determined we do.
23 Q. Okay. What happened after Officer Gordon

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17 (Pages 62 to 65)

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1 wrote his final statement? I believe you
2 said you helped draft a warrant and had to
3 take it down to the warrant clerk; is that
4 right?
5 A. Right.
6 Q. And then you transported Mr. Hogan to the
7 county --
8 A. Right.
9 Q. -- county jail?
10 A. Well, in -- in between there, I'd walked
11 around to Lieutenant Cook's office, showed
12 him the final statement and, you know, talked
13 about how I didn't feel comfortable with it.
14 And, you know, who do I charge. Like I said,
15 we normally charge -- we would, had it been a
16 normal case, we would have charged all of
17 them. However, the objective was to charge
18 the guy that was bitten?
19 Q. What happened the next day --
20 MR. NELMS: Object to the form.
21 Q. -- regarding this incident?
22 A. The -- of course, it was what they call late
23 car, so I was third shift -- late car, third

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1 shift detective. So the next day, when I --
2 when I got home about seven o'clock, I guess,
3 that morning, maybe a little later, maybe a
4 little earlier, I was in the bed. My -- one
5 my sergeants, Sergeant Tatum, calls me on the
6 phone. And I asked -- he said, why in the
7 hell didn't you charge all them guys with the
8 burglary? And he's jumping down my throat
9 about it because he had read my -- read my
10 daily activity report, you know, what
11 happened. And I told him, you know, exactly
12 what happened. And he said, Well, hang on
13 Kirk. This -- this is serious. Let me go
14 around to Randy Jones' office, which is
15 property lieutenant. So they -- he transfers
16 the call to Randy's office and they got me on
17 speaker phone. Sergeant Tatum says well,
18 tell me -- tell me exactly what happened,
19 now. And I told him, you know, what happened
20 the night before. And they said they would
21 take care of it. And I went back to bed.
22 MR. WHITEHEAD: Okay. Let's take a
23 short break just a second.

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1 (Brief recess)
2 Q. Mr. Pelham, I believe you testified earlier,
3 that there was a false alarm at Mr. Arnaud's
4 place earlier that evening; is that correct?
5 A. Yes.
6 Q. And you said that it had also been tripped by
7 the same motion detector; is that correct?
8 A. Yes.
9 Q. How did you verify that was caused by the
10 same motion detector?
11 A. I didn't verify it. That's what Mr. Arnaud
12 had told me.
13 Q. You asked Mr. Arnaud if that same motion
14 detector had set off the alarm earlier?
15 A. He had told me the same one.
16 Q. Mr. Pelham, how many times did you speak with
17 Officer Gordon that night?
18 A. Several times.
19 Q. Give me your best estimate how many
20 conversations you had with him?
21 A. Four or five.
22 Q. How many conversations did you have with
23 Officer Gordon after they had Chad Hogan in

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1 custody?
2 A. Three, maybe.
3 Q. Were they all in person or on the radio or --
4 A. I think they were all in person. One -- it's
5 possible one could have been on the radio.
6 If it was, I don't recall it.
7 Q. Were they all at the police station?
8 A. Yes.
9 Q. And forgive me because I'm not familiar with
10 exactly how the offices and the structure of
11 the department is laid out. Where in the
12 building were you when you had these
13 conversations with Officer Gordon?
14 A. One in Lieutenant Cook's office, once or
15 twice in the hallway.
16 Q. Where in the hallway? Just out -- right
17 outside Cook's office or somewhere else?
18 A. Once outside Lieutenant Cook's office, once
19 by the copy machine.
20 Q. Where is the copy machine?
21 A. When you get onto the second floor, it's at
22 the end of the hallway, or in the center of
23 the hallway. You got -- you take a left to

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18 (Pages 66 to 69)

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1 go to the end. Once in the property
2 supervisor's office, in between the entrance
3 and the copy machine. And a couple of times
4 in the property office where my office was.
5 And once or twice in the conference room.
6 Q. Is there only one conference room?
7 A. Well, there -- yeah, there's only one
8 conference room.
9 Q. Now, you spoke with Anthony Arnaud the first
10 time out there on the scene, at Arnaud's
11 Meats, correct?
12 A. Yes.
13 Q. Once you got back to the police station, how
14 many conversations did you have with
15 Mr. Arnaud?
16 A. At least five.
17 Q. So at least five times you spoke with him,
18 left and came back?
19 A. Yes.
20 Q. The five times that you spoke with Mr. Arnaud
21 when you got back to the police department,
22 were there any witnesses to those
23 conversations. Was anybody else present when

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1 you were speaking with him?
2 A. Possibly Frank Koscho, another detective.
3 Q. On how many different occasions?
4 A. One, if any.
5 Q. That one conversation that Mr. Koscho was
6 present on, what was said during that
7 conversation?
8 A. Well -- and I'm not sure he was. But it
9 was -- if -- if it was, I want to say he was
10 in there when I -- I want to say he was in
11 there when I was trying to get Mr. Arnaud to
12 sign a denial of prosecution form. Meaning
13 he go home, Mr. Hogan go home, the whole
14 thing be done with.
15 Q. Did you -- is this a form you fill out? What
16 is the denial of prosecution form?
17 A. It's a form -- it's pretyped and you just,
18 you know, it says I -- there's a blank
19 spot you put your name -- am aware that this
20 such and such crime was committed and I don't
21 want to prosecute Chad Hogan, pretty much.
22 Q. And you filled one of those out and --
23 A. No, I did not. I think I had one, and Mr.

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1 Arnaud at that time -- I think we -- I read
2 it to him. And that's when he told me that
3 there had -- a crime of, you know, burglary
4 didn't happen. He didn't want to sign it
5 because it's -- it said something like -- I
6 can't remember how it's worded but I, Anthony
7 Arnaud, knowing that the crime of burglary
8 was committed at my business and this subject
9 is in custody. I do not wish to prosecute.
10 He said that there was no burglary. There's
11 no crime been committed. He just wanted to
12 go home.
13 Q. So he refused to sign the statement?
14 A. I didn't push it on him. He -- yeah, pretty
15 much, yeah.
16 Q. Mr. Pelham, do you contend that any of your
17 supervisors ever ordered you to secure a
18 warrant against Chad Hogan?
19 A. Yeah.
20 Q. Tell me which ones and tell me how so.
21 A. Well, I only have one that -- that when
22 Lieutenant Cook gave me an order to work the
23 case, which everything in working a case is

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1 securing a warrant, doing a case file. In
2 the hallway, Lieutenant Caulfield, you know,
3 said, Well, we need this warrant, you know,
4 to justify the bite. And he wouldn't --
5 Caulfield wouldn't actually be the one to --
6 you know, he's not -- not my supervisor,
7 technically. I mean he's a -- he's a
8 lieutenant, but he's not my direct -- my
9 direct supervisor that would -- that, you
10 know, normally gives me orders on a day-to-
11 day basis.
12 Q. Let me rephrase my question. I think when I
13 said secure a warrant, I invoked a whole lot
14 more of the process than I intended to. Do
15 you contend that anyone ordered you to
16 prepare any documents necessary to obtain a
17 warrant of arrest after you had expressed
18 reservations about the credibility of the
19 charge?
20 A. Yes.
21 Q. Okay. Tell me who.
22 A. Lieutenant Cook and Caulfield.
23 Q. Okay. Let's start with Lieutenant Cook.

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19 (Pages 70 to 73)

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1 Tell me to the best of your memory
2 specifically what Lieutenant Cook said to
3 order you to prepare a warrant despite your
4 objections about the credibility of the
5 charge?
6 MR. NELMS: Object to the form.
7 A. He said, Don't worry about it. The burden
8 lies on K-9. Work the burglary, and we'll
9 let K-9 -- K-9 is the one who's got to
10 testify to it in court.
11 Q. Anything else that he said?
12 A. There were several conversations that night
13 with the statements from Officer Gordon and
14 all.
15 Q. But as to ordering you to go and prepare the
16 documents necessary to prepare a warrant of
17 arrest or to effectuate a warrant of arrest,
18 that's -- my question is limited to that.
19 A. Well, after it was determined who we were
20 going to charge with -- with burglary, said
21 charge -- charge the one that's been bitten
22 with burglary. And --
23 Q. But that was in response to when you said who

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1 should I charge; is that correct?
2 A. Right. But again, I mean, all night, my
3 concerns were expressed as far as, you know,
4 I wasn't comfortable with it. The -- the
5 statements didn't -- didn't add up. They
6 were changed, you know, three times. He told
7 me to charge the guy with burglary.
8 Q. I mean, you're saying he told you to charge
9 the guy with burglary, but when? What did he
10 say, other than answering that question on
11 who do we charge? Charge the guy that got
12 bit is what you said. When did he order you
13 to go and charge Chad Hogan with burglary
14 MR. LEWIS: Object to the form.
15 MR. NELMS: Object to the form.
16 A. He's my -- he's my lieutenant. When I --
17 when I first found that the window hadn't
18 been busted out, you know, I told him I -- I
19 was coming back to headquarters. There is
20 no -- there is no burglary. He said to let
21 Sergeant Johnson know. So I did. Sergeant
22 Johnson got -- got irate with me and said,
23 well, come on back --

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1 Q. I'm just talking about Lieutenant Cook right
2 now. Okay?
3 A. Right.
4 Q. And let me ask you this.
5 A. Well, I'm telling you he --
6 Q. Oh, okay. I'm sorry.
7 A. -- he told me charge the guy with burglary.
8 That's answering your question. Simple as
9 that. Charge the guy with burglary. Work
10 the case. Don't worry about the
11 circumstances. K-9 will testify to it. The
12 burden will be on them. I can't answer your
13 question any more basic than that.
14 Q. Did Lieutenant Cook ever order you to sign or
15 prepare a warrant or did you interpret his
16 statements as an order?
17 MR. NELMS: Object to the form.
18 A. He told me to do something. That's an order.
19 Q. Okay. Lieutenant Caulfield, you said that he
20 ordered you to prepare a warrant as well?
21 A. He said something to the effect of we're
22 going to get this warrant. We're in hot
23 water or we're -- he didn't say that. We're

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1 going to get this warrant to justify the
2 bite. And you're going to get us that
3 warrant or something like that; telling --
4 you know, telling me I'm going -- I'm going
5 get the warrant. Now, Mora said, you're a
6 police officer. We're all police officers.
7 You're not going to stab another police
8 officer in the back. You're going to get us
9 that warrant.
10 And there were two other ones there --
11 and I don't know their names -- that were
12 expressing their feelings on -- on me getting
13 the warrant or me not getting the warrant. I
14 don't remember how that was said.
15 Q. Did you say Lieutenant Caulfield said we're
16 going the get this warrant?
17 A. Yes.
18 Q. Is how he passed that order to you?
19 A. Yes.
20 Q. And that Officer Mora basically said the same
21 thing, we're going the get this warrant?
22 A. Yes, and I wasn't going to stab another
23 police officer in the back. We're -- we're

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20 (Pages 74 to 77)

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<p>1 all police officers, you know. We're going 2 to help each other. Something to that 3 effect. 4 Q. Did Lieutenant Caulfield or Officer Mora make 5 any other statements that you interpreted as 6 an order to charge Chad Hogan with burglary? 7 A. I don't recall. 8 Q. All right. Mr. Pelham, have you ever 9 testified in court or the grand jury or any 10 kind of proceedings about these incidents 11 we've talked about today regarding your 12 arrest with Chad Hogan. 13 A. No. As far as I know the warrant was not 14 proessed, but I'm not sure about that. 15 Q. Mr. Pelham, I'm going to hand you a document 16 we've marked as Defendant's Exhibit #1. 17 Mr. Pelham, this is a verified claim that you 18 had previously filed against the City of 19 Montgomery back in May of this year. Let me 20 ask you first if you recognize this 21 document. 22 A. I do. 23 Q. Okay. And on the next to the last page, let</p>	<p>1 Q. Okay. In paragraph two, you also state 2 that -- speaking of Mr. Arnaud -- also, he 3 advised that due to the stormy weather that 4 night, that he had already come to the 5 business earlier in the evening when the 6 alarm had gone off initially. Did Mr. Arnaud 7 specifically state to you that the stormy 8 weather had caused the alarm to go off 9 before? 10 A. I can't remember. I believe -- I believe he 11 did. And he said that he -- that's when he 12 had told me that he had also had rats. Said 13 he had big rats. 14 Q. Why didn't you mention anything about the 15 rats in your claim? 16 A. In this -- this paperwork here? 17 Q. Yes. 18 A. I probably forgot about it. 19 Q. In your experience as a police officer, have 20 you seen weather set off motion sensors on a 21 burglar alarm a lot? 22 MR. NELMS: Object to the form. 23 A. They -- lightning, vibration, set them off</p>
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<p>1 me ask you if that's your signature. 2 A. It is. 3 Q. All right. I'm going to direct your 4 attention first to paragraph two. You stated 5 in there the owner of the business, Anthony 6 Arnaud, went into the business and advised 7 that there had not been a burglary as he was 8 the one that had left the window open? 9 A. Yes. 10 Q. Would you agree that a burglary could still 11 occur even though he had left the window 12 open? 13 MR. NELMS: Object to the form. 14 A. Oh, yeah. 15 Q. Okay. Do you think that Mr. Arnaud knew the 16 definition of burglary, the legal definition 17 of burglary? 18 MR. NELMS: Object to the form. 19 A. I don't know the man. 20 Q. Okay. But did you explain to Mr. Arnaud that 21 it's possible for a burglary to occur without 22 a theft having actually taken place? 23 A. Oh, yeah.</p>	<p>1 all night long. 2 Q. You've seen lightning set off motion 3 detectors a lot? 4 A. Oh, yeah. 5 Q. Okay. 6 A. Train going by a business will set off a 7 motion detector. 8 Q. Is there a train going by Arnaud's Meats 9 anywhere? 10 A. Not that I know of. There is a railroad 11 track right there by the Boulevard, but I -- 12 I mean, I don't know. 13 Q. Were there any witnesses present when 14 Mr. Arnaud told you that he believed the 15 weather set the motion detector off? 16 A. Officer Fike and Officer Forbus. 17 Q. I'm going to direct your attention to the 18 next page on paragraph three. It states, 19 During the time that Detective Pelham was at 20 the business, he learned that the K-9 unit 21 had given chase to the automobile which was 22 earlier seen leaving the vicinity. And that 23 the automobile had wrecked at Pelzer and</p>

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21 (Pages 78 to 81)

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<p>1 Wareingwood drive. He also learned that the</p> <p>2 K-9 dog had bitten one of the occupants of</p> <p>3 the vehicle.</p> <p>4 Had Chad Hogan already been bitten by</p> <p>5 the dog at the time you stated developing</p> <p>6 concerns about the credibility of a burglary</p> <p>7 charge?</p> <p>8 A. No. It was shortly after.</p> <p>9 Q. Had you voiced your concerns to anyone in the</p> <p>10 K-9 unit that was pursuing -- that were</p> <p>11 pursuing the suspects at the time you'd been</p> <p>12 bitten?</p> <p>13 A. I think I got on channel one, the channel one</p> <p>14 radio and advised that there was not a</p> <p>15 burglary. I could be mistaken. I might</p> <p>16 have. I could have done that and I might not</p> <p>17 have. I want to say I did. And again, my</p> <p>18 conversation with Sergeant Johnson, I had</p> <p>19 called to let him know, hey, there's no</p> <p>20 burglary. So, I mean, it all happened so</p> <p>21 fast. And around about the same time I was</p> <p>22 discovering -- you know, I waited on</p> <p>23 Mr. Arnaud to get there. So --</p>	<p>1 Q. Do you remember him saying that a crime had</p> <p>2 not been committed?</p> <p>3 A. I mean, I'm sure that wasn't his exact</p> <p>4 words. He told me, you know, nothing is</p> <p>5 missing. The window was left open. If</p> <p>6 somebody had been in here, you know, there</p> <p>7 would be -- I can't remember what his exact</p> <p>8 words were. I think I believe he said the</p> <p>9 things on the windowsill would have been</p> <p>10 broken or -- because he said they were right</p> <p>11 up under or right up -- sitting right on the</p> <p>12 windowsill.</p> <p>13 Q. Do you remember where in the business the</p> <p>14 motion detector was?</p> <p>15 A. I don't remember where.</p> <p>16 Q. Real briefly, give me a description of the</p> <p>17 inside of this business. I've never been in</p> <p>18 there before. Is it one open room or --</p> <p>19 A. It's one open room except for, you walk in.</p> <p>20 There's a little dining area. There's a bar-</p> <p>21 type deal. And then there's a door you walk</p> <p>22 into, and there's a kitchen back there.</p> <p>23 That's one big room.</p>
Page 79	Page 81
<p>1 Q. Had Chad Hogan already been apprehended by</p> <p>2 the time Mr. Arnaud got to the business?</p> <p>3 A. I couldn't tell you. The car had already ran</p> <p>4 into the fence. But then there was a foot</p> <p>5 pursuit. I don't know.</p> <p>6 Q. Okay. Let me rephrase my question, then.</p> <p>7 Had the car already hit the fence at the time</p> <p>8 Mr. Arnaud arrived at the business?</p> <p>9 A. I believe so.</p> <p>10 Q. And in paragraph four, you state Detective</p> <p>11 Pelham advised his supervisors, Lieutenant</p> <p>12 Cook and Sergeant Johnson from the scene,</p> <p>13 that the owner stated that his business had</p> <p>14 not been entered and that there had been no</p> <p>15 crime committed at the location. Did</p> <p>16 Mr. Arnaud specifically say that no crime had</p> <p>17 been committed?</p> <p>18 A. It was my way of saying, you know, yeah,</p> <p>19 Mr. Arnaud stated that his window hadn't been</p> <p>20 busted out. No property was taken. And it</p> <p>21 didn't look like anything had been tampered</p> <p>22 with. Nothing was missing. And that's per</p> <p>23 what Mr. Arnaud had stated.</p>	<p>1 Q. So it's mainly set off in the two big rooms?</p> <p>2 A. Right. There's a bathroom, two bathrooms, I</p> <p>3 think.</p> <p>4 Q. The window that was open, was that --</p> <p>5 A. In the dining area.</p> <p>6 Q. The dining area.</p> <p>7 A. When you walk in the front door on the</p> <p>8 right. It's the only window on that side, I</p> <p>9 believe.</p> <p>10 Q. Was the motion detector that set the alarm</p> <p>11 off in the same room?</p> <p>12 A. I couldn't tell you for sure if it was or</p> <p>13 not.</p> <p>14 Q. Ask you hypothetical, and this is strictly a</p> <p>15 hypothetical. Had that motion detector been</p> <p>16 in that room, if someone stuck there head in</p> <p>17 that door on the way in, could that have set</p> <p>18 the alarm off before their foot ever hit the</p> <p>19 floor?</p> <p>20 MR. LEWIS: Object to the form.</p> <p>21 MR. NELMS: Object oh the form.</p> <p>22 A. I guess. I don't know.</p> <p>23 Q. Okay.</p>

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22 (Pages 82 to 85)

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- 1 A. That window was too high off the ground to
2 stick your head in. Just to let you know.
3 Q. How high off the ground was it?
4 A. It wasn't too terribly high. But you would
5 have to -- you would have to reach up and
6 pull yourself through it. I mean, it's not
7 something you can walk up to and throw your
8 leg in.
9 Q. Give me your best estimate about how high up
10 it was.
11 A. Five -- five feet six. Between five and six
12 feet.
13 Q. Second sentence of paragraph four states that
14 at that time Lieutenant Caulfield, the K-9
15 supervisor advised that there had been an
16 incident at the business and that someone had
17 to be charged.
18 Was Lieutenant Caulfield on the scene?
19 A. Which scene?
20 Q. At the business.
21 A. At the business? Not while I was there, no.
22 Q. Where was Lieutenant Caulfield when he made
23 this statement that you're referring to in

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- 1 paragraph four?
2 A. I believe he was at the scene where the car
3 had wrecked, ran into the fence.
4 Q. Did you hear him make that statement that
5 you're referring to in paragraph four,
6 Lieutenant Caulfield?
7 A. That was a statement that was told to
8 Sergeant Johnson which was relayed to me.
9 Q. Where was Sergeant Johnson at that time?
10 A. He was at the scene of the wreck as well.
11 Q. What exactly did Sergeant Johnson say to you?
12 A. Hey, we got a dog bite. The alarm went --
13 you know, Kirk, we got a dog bite. The alarm
14 went off. Window is open. Billy -- which is
15 Caulfield. He said, Billy said we're
16 going -- we got to justify it or something --
17 something like that. We got to -- we got to
18 charge this guy or justify or charge this
19 guy, one of the two.
20 Q. Were you still at Arnaud's Meats or were you
21 back at the station at this point?
22 A. I was in my car, I'm sure. Either leaving
23 Arnaud's -- either in the parking lot of

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- 1 Arnaud's or on the way back to the police
2 department.
3 Q. Mr. Pelham, I'm going to hand you a document
4 that we're going to mark as Defendant's
5 Exhibit #2 and Exhibit #3. Let me ask you
6 first, do you recognize these documents?
7 A. I do.
8 Q. Mr. Pelham, I apologize. Hang on to those.
9 That's not what I want to give you. That's
10 what I want to give. I'm also going to hand
11 you a document we're going to mark as
12 Defendant's Exhibit #4. Speaking of Exhibit
13 #4, do you recognize that document?
14 A. I do.
15 Q. Did you prepare that document?
16 A. I did.
17 Q. What is this?
18 A. Daily Activity Report for the detective
19 division.
20 Q. Okay. The second incident listed on this
21 report says arrest of black male, Chad Lamar
22 Hogan. Fair to say this is a description of
23 the incident we've been talking about?

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- 1 A. Yes, it is.
2 Q. Okay. You were aware at the time you
3 prepared this document that they had found a
4 ski mask and a nine millimeter handgun in the
5 car that Chad Hogan fled in, correct?
6 A. Yeah.
7 Q. In paragraph five you state, Further, it was
8 learned that the subjects in the car refused
9 to stop for the K-9 unit because they had
10 marijuana in their possession. And I'm
11 sorry, I'm referring back to your verified
12 complaint.
13 A. Okay.
14 Q. I apologize.
15 A. Correct.
16 Q. Do you think it's possible they fled more
17 because they got a nine millimeter handgun, a
18 Mag flashlight, and a ski mask in the car as
19 opposed to --
20 MR. NELMS: I object to the form.
21 Q. -- some marijuana?
22 MR. NELMS: Object to the form.
23 A. I don't think -- not all subjects in the car

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23 (Pages 86 to 89)

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1 knew that there was a weapon in the car. And
2 I --
3 Q. What do you base that on, that statement on?
4 A. Based on separating them and -- and talking
5 to them. You know, what happened? What were
6 y'all doing? Why did you run? Matter of
7 fact, I know not all of them knew as far as
8 what I -- I found, not all of them knew that
9 there was a weapon in the car.
10 Q. Do you think they would have admitted knowing
11 there was a weapon in the car?
12 MR. NELMS: Object to the form.
13 A. One of them did admit to the weapon being in
14 the car.
15 Q. Do you think others just might have denied it
16 even though they did know?
17 A. It's a possibility.
18 MR. NELMS: Object to the form.
19 Q. What about on the ski mask? Is it possible
20 that they would have denied knowing about it
21 even if they had known?
22 MR. NELMS: Object to the form.
23 A. It's possible.

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1 Q. Did they know they were being investigated
2 for burglary at the time you were questioning
3 them?
4 A. I'm sure they put two and two together.
5 Q. You think they could have figured out that
6 wouldn't have bode well for them if they said
7 they knew a ski mask was in the car --
8 MR. NELMS: Object to the form.
9 Q. -- in light of the fact that they were being
10 investigated for burglary?
11 A. It's a possibility
12 Q. You remember if it was cold that day?
13 A. I don't remember -- it was raining real hard.
14 Q. Do you remember if you had a jacket on
15 yourself? It was March 30th, I believe, was
16 it not?
17 A. Correct. If I did, I had this jacket on or
18 something similar to it.
19 Q. It wouldn't have been cold enough to justify
20 wearing a ski mask that day, would it have
21 been?
22 MR. NELMS: Object to the form.
23 A. I don't recall.

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1 Q. I'm going to refer you back to Exhibit #2.
2 Ask you if you recognize that document.
3 A. I do.
4 Q. Was that the final statement that Officer
5 Gordon prepared? And take your time if you
6 need to look over it.
7 A. It wasn't the first one. Second or third
8 one. I can't say for sure.
9 Q. You don't know which, if it's second or
10 third?
11 A. If I saw the -- if I saw the other one, I
12 could tell you. But it wasn't this first
13 one.
14 Q. From reading this statement, and let me
15 preference my question by saying I understand
16 that you had questions about the credibility
17 of the radio traffic and the statements from
18 Mr. Arnaud. But as to the statement itself,
19 with no knowledge of any outside sources, do
20 you contend that this statement does not
21 establish the elements necessary for
22 burglary?
23 A. If I -- if I had no knowledge of anything

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1 else, just looking at this statement?
2 Q. Yes, sir.
3 A. Okay. What was your question again?
4 Q. Would you agree that the statement
5 establishes the elements of burglary?
6 A. No, it does not.
7 Q. Can you tell me why?
8 A. It establishes reasonable suspicion, probable
9 cause to -- you know, it's something that
10 needs to be investigated.
11 Q. You're right. Let me rephrase my question.
12 Would you agree that the statement
13 establishes probable cause to believe that a
14 burglary has been committed by these suspects
15 at Arnaud's Meats.
16 MR. LEWIS: Object to the form.
17 MR. NELMS: Object to the form.
18 A. I would -- I would say reasonable suspicion
19 if I had to choose a word. I would say
20 reasonable suspicion.
21 Q. Why would you distinguish between probable
22 cause and reasonable suspicion?
23 A. Well, reasonable suspicion, you know, this

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24 (Pages 90 to 93)

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<p>1 sounds suspicious. You know, if there was a</p> <p>2 burglary, somebody is mighty close to the</p> <p>3 building. Probable cause, the way I was</p> <p>4 taught is, you know, why are you following up</p> <p>5 on this reasonable suspicion. Why are you</p> <p>6 following up on this suspicious activity?</p> <p>7 Q. Okay. Are you stating that the statement</p> <p>8 would have needed to say that the suspect was</p> <p>9 seen coming out of the window in order to</p> <p>10 establish probable cause?</p> <p>11 MR. NELMS: I'm going to object to the</p> <p>12 form to the extent it's asking for</p> <p>13 a legal conclusion.</p> <p>14 Q. You used to be a police officer, and part of</p> <p>15 your duties were to actually decide whether</p> <p>16 or not probable cause existed and to charge</p> <p>17 people with crimes, correct?</p> <p>18 A. Right. Well, you would have to have the</p> <p>19 elements, of course, to charge for the</p> <p>20 crime.</p> <p>21 Q. Would you agree you are qualified to answer</p> <p>22 that question?</p> <p>23 A. Yes.</p>	<p>1 in the Montgomery County Detention Facility.</p> <p>2 As to your first sentence that the owner of</p> <p>3 the business was -- had been talked to by</p> <p>4 Lieutenant Caulfield, how do you know that</p> <p>5 Lieutenant Caulfield talked to Mr. Arnaud?</p> <p>6 A. He had told me. When I was around in</p> <p>7 Lieutenant Cook's office, when I had made my</p> <p>8 way back around to Mr. Arnaud he had told</p> <p>9 me -- he -- Mr. Arnaud was sitting in one of</p> <p>10 the supervisor's office, and all the K-9</p> <p>11 officers were -- there's two desks out in the</p> <p>12 hallway and the chairs, and that's where they</p> <p>13 kind of all hang around when they're</p> <p>14 waiting. When I come back around from</p> <p>15 Lieutenant Cook's office, they were all in</p> <p>16 that area. And he said that he was talking</p> <p>17 with -- he didn't know his name, I don't</p> <p>18 think. But he said your lieutenant, which it</p> <p>19 was Lieutenant Caulfield -- my direct</p> <p>20 lieutenant was Cook, but he was speaking of</p> <p>21 Lieutenant Caulfield.</p> <p>22 Q. How do you know he was speaking of Lieutenant</p> <p>23 Caulfield?</p>
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<p>1 Q. Okay. And do you feel like this statement</p> <p>2 would have had to have stated that somebody</p> <p>3 was seen coming out of the window to</p> <p>4 establish probable cause?</p> <p>5 A. Probable cause to do what?</p> <p>6 Q. To arrest him.</p> <p>7 A. If he was coming out of the window?</p> <p>8 Q. And charge him with burglary, yeah.</p> <p>9 A. If the -- if the -- all the other elements</p> <p>10 are there, yeah.</p> <p>11 Q. But would that statement have been necessary</p> <p>12 to establish the elements?</p> <p>13 A. Yes, it would.</p> <p>14 Q. If he was seen coming out of the window.</p> <p>15 Okay. I'm going to refer to paragraph eight</p> <p>16 back in your verified complaint. You state</p> <p>17 in paragraph eight that Detective Pelham</p> <p>18 talked with the owner of the business and</p> <p>19 then learned that the owner had been talked</p> <p>20 with by Lieutenant Caulfield. At this time</p> <p>21 Mr. Arnaud was tired and wanted to go home</p> <p>22 and just wanted to sign the warrant. The</p> <p>23 warrant was signed and the subject was placed</p>	<p>1 A. When I come back around, he was walking out</p> <p>2 and, you know --</p> <p>3 Q. Lieutenant Caulfield was walking out?</p> <p>4 A. Right.</p> <p>5 Q. Did you see Lieutenant Caulfield speaking</p> <p>6 with Mr. Arnaud?</p> <p>7 A. Mr. Arnaud was the only one in the room. I</p> <p>8 can't remember if I did or not.</p> <p>9 Q. But Mr. Arnaud never mentioned Lieutenant</p> <p>10 Caulfield by name?</p> <p>11 A. I can't remember if he did or not.</p> <p>12 Q. And you never specifically saw them talking?</p> <p>13 A. I can't remember if I did.</p> <p>14 Q. Paragraph nine of your verified complaint,</p> <p>15 you state that you spoke with Major West and</p> <p>16 that Major West warned you that if an</p> <p>17 internal affairs investigation occurred, that</p> <p>18 it would make him as well as the detective</p> <p>19 division look bad?</p> <p>20 A. Make me as well as the detective division</p> <p>21 look bad.</p> <p>22 Q. Okay. So you're speaking of yourself --</p> <p>23 A. Right.</p>

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25 (Pages 94 to 97)

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<p>1 Q. -- when you say him right there?</p> <p>2 A. Right.</p> <p>3 Q. Okay. Mr. West, excuse me, Major West had</p> <p>4 this conversation with you in person?</p> <p>5 A. Yeah.</p> <p>6 Q. Was anybody else present when this</p> <p>7 conversation occurred?</p> <p>8 A. Lieutenant Randy Jones and Sergeant Scott</p> <p>9 Tatum.</p> <p>10 Q. Where did the conversation take place?</p> <p>11 A. In Major West's office.</p> <p>12 Q. Did Major West discourage you from --</p> <p>13 A. Yes, all three of them did.</p> <p>14 Q. -- reporting this? And I understand you</p> <p>15 stated in paragraph nine that, He stated that</p> <p>16 it would make you as well as the detective</p> <p>17 division look bad. Did he make any other</p> <p>18 statements that you felt were discouraging</p> <p>19 you from going forward with this?</p> <p>20 A. He said that people would call me anti-police</p> <p>21 and liberal and I mean there was all kind of</p> <p>22 things said. I can't remember what -- what</p> <p>23 exactly was said. But anti-police was the</p>	<p>1 to influence you not to pursue an internal</p> <p>2 affairs investigation just by telling you the</p> <p>3 truth?</p> <p>4 MR. LEWIS: Object to the form.</p> <p>5 A. He told me the negative -- negative aspect of</p> <p>6 it. No positive aspect. You know, telling</p> <p>7 the truth, you're doing the right thing.</p> <p>8 Q. All right. Is it fair to say that Major West</p> <p>9 never told you not to pursue the</p> <p>10 investigation?</p> <p>11 A. Is it fair -- is it -- say that again.</p> <p>12 Q. Is it fair to say that Major West never told</p> <p>13 you not to pursue this -- an internal affairs</p> <p>14 investigation?</p> <p>15 MR. NELMS: Object to the form.</p> <p>16 A. He -- him as well as Randy Jones told me that</p> <p>17 they would deal with it in their own way. We</p> <p>18 didn't need -- you don't need to launch an</p> <p>19 internal investigation or request one. How</p> <p>20 about you let us deal with it in our own</p> <p>21 way. I told them no.</p> <p>22 Q. Anything else they said?</p> <p>23 A. I mean, I was in there a little while. So</p>
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<p>1 word that was thrown around more than once.</p> <p>2 Q. So he told you about some of the negative</p> <p>3 effects that could happen if you were to</p> <p>4 pursue an internal affairs investigation?</p> <p>5 A. Right.</p> <p>6 Q. Did he ever tell you, you don't want to do</p> <p>7 this, don't do this, you shouldn't do this;</p> <p>8 or did he just simply tell you what negative</p> <p>9 repercussions could come from such an</p> <p>10 investigation?</p> <p>11 A. I think he said he didn't think I was ready</p> <p>12 for -- he said I don't think you're ready for</p> <p>13 the repercussions -- repercussions that comes</p> <p>14 along with something like this.</p> <p>15 Q. Did he explain that?</p> <p>16 A. He said people -- people are going to call</p> <p>17 you anti-police. You're probably going to</p> <p>18 get nasty letters. People ride by your</p> <p>19 house, call your house, hang up, that kind of</p> <p>20 thing. Nobody will want to work with you.</p> <p>21 Q. Do you think that's all true?</p> <p>22 A. It turned out to be true, yeah.</p> <p>23 Q. Do you think he is discouraging you or trying</p>	<p>1 I'm sure -- I don't recall what else was</p> <p>2 said.</p> <p>3 Q. Next paragraph in your verified complaint,</p> <p>4 paragraph ten, you state: At the time they</p> <p>5 leave Major West's office, Sergeant Tatum</p> <p>6 takes Detective Pelham into his office and</p> <p>7 goes off on him regarding the reporting of</p> <p>8 the incident. Tell me what you mean by</p> <p>9 Sergeant Tatum going off on you. What did</p> <p>10 Sergeant Tatum say to you?</p> <p>11 A. He told me I was stirring up trouble.</p> <p>12 Stirring up shit was his words. Said that I</p> <p>13 was by -- I was by myself. And then he</p> <p>14 pushed real hard about -- wanted to know if I</p> <p>15 had a tape recorder in my pocket, if I</p> <p>16 recorded the meeting with him, Randy Jones,</p> <p>17 and J.C. West.</p> <p>18 Q. Did you?</p> <p>19 A. I did not.</p> <p>20 Q. Okay. I'm sorry.</p> <p>21 A. Should have. And he said I was making --</p> <p>22 making work hard on myself. Bringing --</p> <p>23 putting a burden on my own shoulders. At</p>

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26 (Pages 98 to 101)

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1 that time, I walked out of his office. That
2 was all that was said.
3 Q. Was it just you and him in his office?
4 A. Yes.
5 Q. Anybody else ever tell you they overheard
6 that conversation in the hall or anything?
7 A. No.
8 Q. Paragraph 11 in your verified complaint
9 states: Later that day, Pelham gives his
10 statement to Mike Trotter and Pervis Fleming
11 of the internal affairs of division. It was
12 shortly thereafter that the harassment begins
13 in which he is cursed by Lieutenant Caulfield
14 as well as others in the detective division.
15 Starting with Lieutenant Caulfield, when do
16 you allege that Lieutenant Caulfield cursed
17 you about this incident?
18 A. It was the next day. I got to work that --
19 that evening around seven o'clock. It was a
20 little later. He called the detective
21 division or called on the radio and asked for
22 a phone number. I gave him my office
23 number. And asked if I had his handcuffs

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1 up there. I told him I didn't have them. I
2 didn't see them. And he said -- I said, do
3 you want a pair that, you know, will get you
4 through the night? And he said, No,
5 goddammit, I want my mother-fucking
6 handcuffs. I said, Well, I got a pair if you
7 want to borrow them to get you through the
8 night; or the back desk has got a pair, so I
9 know they've got a pair if you want a pair
10 from them. And he said, Mother-fucker, I
11 want my handcuffs -- or, No, mother-fucker, I
12 want my handcuffs. And then he hung up the
13 phone.
14 Q. Was the Chad Hogan incident mentioned at all
15 during that conversation?
16 A. No, it was not.
17 Q. Is that the only incident you're speaking of
18 in paragraph 11 of your verified complaint as
19 to Lieutenant Caulfield?
20 A. Yes, it is.
21 Q. You said as well as others in the detective
22 division. Who else are you speaking of?
23 A. Scott Seithalil. S-E-I-T-H-A-L-I-L.

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1 Q. Can describe the incident with Detective
2 Seithalil? He is a detective, correct?
3 A. Correct. Me -- me and Scott used to be -- we
4 were close. Hung out on the weekends, that
5 kind of thing, and worked together. After
6 all this, my supervisors would -- well, after
7 this situation, I was moved to first shift,
8 detective division where Scott works. And my
9 supervisors would assign me cases and -- or
10 him cases and ask that I go with him to help
11 him out on something, and he'd go with me to
12 help me out on something so we'd end up
13 together. And he -- Scott voiced his
14 opinion. He heard, you know, bits and pieces
15 of what happened and -- first he -- he just
16 was kind of fishing, wanting to know exactly
17 what happened. Anyway, as he learned from
18 other people what happened, he started to
19 disagree with me, you know, speaking out
20 about it. And I -- I carried my digital
21 recorder in my shirt pocket, which a lot of
22 detectives do. And I always carried it in my
23 shirt pocket. And he wouldn't -- he'd kind

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1 of watch what he -- what he said around me,
2 you know, due to the recorder in my pocket.
3 He'd say, why don't you take that recorder
4 out of you pocket, you know, and blah blah.
5 He said, you know, everybody knows you're
6 recording people. And I told him I ain't
7 recording nobody. And, you know, you need to
8 watch your back. You done pissed a lot of
9 folks off. Billy Caulfield has been here I
10 think 18 years, something like that. And he
11 ain't just going the let this slide. And
12 that went on and on for several days after,
13 you know. Take -- why don't you take your
14 tape recorder out. Everybody knows you're
15 recording them and that kind of stuff.
16 Q. Anybody else ever cuss you?
17 A. No, not cuss me, no. Frank Koscho, I mean he
18 didn't -- he didn't say -- he didn't say a
19 whole lot. He let me know he -- he didn't
20 care too much for me. He was the other
21 detective that was working with me that
22 night. No.
23 There was a guy, another officer, a

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<p>1 young officer I'd never seen before -- he 2 must have been just out of the academy -- 3 made the comment the day before after all -- 4 all this had gone on. He said, So you 5 charged him anyway, huh? And that was it. 6 Q. All right. Paragraph 12 of your verified 7 complaint states: Detective Pelham was told 8 that he needed to watch his back. Who told 9 you you needed to watch your back? 10 A. Scott Seithalil, Ben Harrison. I -- I don't 11 recall any of the other ones. I don't know 12 if there was anybody else or not. 13 Q. Was anybody present when Seithalil told you 14 to watch your back? 15 A. Chris Gruhn. 16 Q. Where were y'all when that conversation 17 occurred? 18 A. In -- after this -- after this incident, me, 19 Scott, and Chris were together a lot. It 20 happened to me at headquarters, in the car, 21 out on the scene. Happened just about 22 everywhere you could put us. 23 Q. What, people telling you to watch your back?</p>	<p>1 Q. Harrison. 2 A. Harrison. 3 Q. How many times did Ben Harrison tell you to 4 watch your back? 5 A. I think that was once. That was the only 6 time we talked. 7 Q. Was anybody else present when y'all had that 8 conversation? 9 A. Maybe Chris Gruhn. 10 Q. Where did that conversation occur? 11 A. In the property office. 12 Q. In paragraph 12 you also state that: 13 Further, the detective division supervisors 14 took his automobile away from him and then 15 assigned him a large number of cases to 16 attempt to work from police headquarters 17 without a vehicle. Tell me what you're 18 talking about right there. 19 A. When -- in the detective division your city 20 vehicle would be a Chevrolet Lumina or a 21 Malibu or Impala; I forget what it is. The 22 detective cars, you can take them home if -- 23 if you live in the city limits. If you live</p>
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<p>1 A. Well, Scott -- Scott saying it. There was 2 even an incident where we were over off of 3 Wares Ferry Road. He pulls into -- pulls 4 into the woods, and we were -- Charlie 5 Brassel Road off of Wares Ferry, and pulls 6 the car -- there's a big pond back there. 7 Pulls the car right up to the pond. Makes a 8 comment like we're going -- we're going to 9 get out and leave you here, leave you 10 floating. You know, just little things like 11 that. 12 Q. Was he joking when he said that? 13 MR. LEWIS: Object to the form. 14 A. I don't know. I don't know. 15 Q. Did you take it as a serious threat? 16 A. I wasn't going to turn my back on him, just 17 because I didn't know. I was unsure. 18 Q. Okay. And who was that that stated that to 19 you? 20 A. Scott Seithalil. 21 Q. And you said the other officer was Harris 22 that told you to watch your back? 23 A. Ben Harrison.</p>	<p>1 outside of the city limits, you have to be on 2 call in order to take your city car home. I 3 live outside the city limits in Millbrook. 4 And the way -- the way that works is, I was 5 told by my sergeants, my daytime sergeants 6 that I could take my city car home like 7 almost all the other detectives were doing. 8 And if something happens, call them before 9 you call anybody else. They'll put you on 10 call. So I did that for several months. 11 After all this got out in the open, 12 the -- and I don't know how -- my -- Major 13 West came to me in the hallway and said -- 14 or, no, Sergeant Billy Gordon came to me and 15 said we're -- they want me to take your car 16 away from you for a little while. He was 17 trying -- Billy was trying to make -- make 18 some peace out of the situation. And he 19 said, I'm sorry, man. He said, you know, I 20 just -- I do what they tell me to do. And I 21 know we're friends and, you know, don't be 22 mad at me about it. But they want me to take 23 your car away from you. So don't get caught</p>

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1 in your car. I asked him, I said, Well, how
2 am I going to work my cases? He said, Well,
3 I don't know. Do what you can at -- at the
4 police department. If you need to, ride with
5 somebody else. And they took my car. Didn't
6 tell me how long they was going to have it.
7 Q. You didn't have another vehicle?
8 A. No.
9 Q. I mean, did they state why -- did they say
10 we're doing because you live outside the
11 police jurisdiction?
12 A. Right.
13 Q. Do you know if any other officers that lived
14 outside the police jurisdiction had their
15 cars taken away from them or -- not taken
16 away, but were discontinued from being
17 allowed to take their cars home at night or
18 while they weren't at work at the same time?
19 MR. NELMS: Object to the form.
20 Q. Let me start over again. That was a horrible
21 question.
22 MR. NELMS: I don't think you
23 understand what he said.

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1 MR. GILLIS: Well, now, you can't say
2 what he doesn't understand, not
3 unless you --
4 Q. Let me see if I can clarify. You're stating
5 that up until this incident, there's always
6 been a policy that says officers who live
7 outside the police jurisdiction aren't
8 allowed to take their vehicles home with them
9 while they're not at work unless they're on
10 call?
11 A. Right.
12 Q. And you're stating for months prior to this
13 incident you were always allowed to take your
14 vehicle home while you weren't at work, and
15 you were just told that if anybody -- that if
16 anything happened to the vehicle, make sure
17 you call your supervisors and they just list
18 you as on-call --
19 A. Right.
20 Q. -- and everything will be okay.
21 A. Right.
22 Q. But once this incident occurred, you were
23 told you could no longer take your vehicle

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1 home with you while you weren't at work.
2 A. Right.
3 Q. My question is, do you know of any other
4 officers that that happened to at or around
5 the same time or lived outside the police
6 jurisdiction and had been allowed to take
7 their cars home but then were told don't do
8 that anymore?
9 A. No.
10 Q. Okay. Do you know of any officers who were
11 still allowed to take their cars home who
12 lived outside the police jurisdiction at the
13 time?
14 A. Yes.
15 Q. Who?
16 A. There was Scott Thompson.
17 Q. Where does Scott live?
18 A. Tallassee.
19 Q. Let me see. For point of clarification, as
20 best you can remember, about when did Billy
21 Gordon tell you, you couldn't take your car
22 home anymore unless you were on call?
23 A. Like the day after or two days after all this

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1 happened.
2 Q. So early April?
3 A. Right.
4 Q. So even in April 20th, 2005, Scott Thompson
5 was still taking his car home to Tallassee
6 even when he wasn't on call?
7 A. I think I left before April. No. I --
8 Q. This happened March 30th. I'm just going by
9 that.
10 A. Yeah. I mean, until -- until I think -- I
11 don't know. I think a lot of things changed
12 when Mike Briddell got a phone call. I think
13 there was a lot of running around, covering
14 things up. I mean I can't answer that
15 question.
16 Q. Okay.
17 A. I don't know.
18 Q. My question is let's just get back to Scott
19 Thompson. Do you specifically recall Scott
20 Thompson continued to take his vehicle --
21 A. As long as I was employed, yes.
22 Q. For the remainder of your employment, Scott
23 Thompson was allowed to keep taking his car

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<p>1 home to Tallassee even when he wasn't on 2 call? 3 A. Right. Right. 4 Q. Any other officers that you know of that live 5 outside -- 6 A. Gene -- Gene Sisson, Kevin Byrd. 7 Q. Where did Gene live? 8 A. Gene lived in Bullock County. I think -- I 9 think Bullock County. 10 Q. All right. Who else besides Gene Sisson? 11 A. Kevin Byrd. He lived down the street from 12 me. 13 MS. CONNER: Chris, I think you're 14 missing the point here. He had no 15 car at all to work his cases. He 16 had to catch a ride. 17 MR. NELMS: That's what I'm saying. 18 MS. CONNER: They took the car totally 19 away. Here's cases to work. You 20 work them out of headquarters -- 21 Q. You weren't allowed to even while you were on 22 duty -- 23 MR. NELMS: That's what he said.</p>	<p>1 supervisors of the harassment as well as 2 informing Mayor Bright in an e-mail of the 3 same. This e-mail went unanswered by Mayor 4 Bright. Detective Pelham contacted the 5 mayor's officer and was given an appointment 6 with Michael Briddell the mayor's 7 administrative assistant some ten days after 8 his request. What specifically did this 9 e-mail say? 10 A. I started from the beginning with what 11 happened to Mr. Hogan. 12 Q. And I was going to ask you, do you have a 13 copy of -- go ahead. I'm sorry. 14 A. Of what happened with Mr. Hogan and basically 15 what I've told you. I just kind of -- it was 16 brief. More brief than that. 17 Q. Okay. Next question. Do you have a copy? 18 MS. CONNER: I need a copy. That's my 19 only copy. 20 MR. WHITEHEAD: Let's take a break for 21 a second, anyway. That's fine. 22 (Brief recess) 23 Q. All right. Mr. Pelham, I have already handed</p>
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<p>1 A. Right. 2 Q. Okay. 3 MR. NELMS: No bicycle, no horse, no 4 nothing. 5 Q. Okay. You stated in paragraph 13 that you 6 were warned that you needed to leave your 7 locker as well as your personal vehicle 8 locked, as someone would possibly put illegal 9 drugs or contraband in your locker or 10 vehicle. Who told you that? 11 A. Scott Seithalil told me that. 12 Q. Was anybody around when Seithalil told you 13 that? 14 A. Chris Gruhn. 15 Q. Where were you when Seithalil told you that? 16 A. He told me that two or three times. We were 17 in Chris Gruhn's car one day, one day in the 18 property office. That's about all I can 19 remember as far as where. 20 Q. Chris Gruhn was present both times? 21 A. Yes. 22 Q. Paragraph 15 of your verified complaint you 23 state: Detective Pelham advised his</p>	<p>1 you a document that's been marked as 2 Defendant's Exhibit #3. And that, I believe, 3 is the affidavit that was signed by 4 Mr. Arnaud in connection with the arrest 5 warrant. I've got two other documents that 6 I'm going to mark as Defendant's Exhibit #5 7 and Defendant's Exhibit #6. Ask you to look 8 at those and see if you recognize those. 9 A. Yes. 10 Q. Okay. Can you tell me what #5 and #6 are 11 real quick? 12 A. The warrant of arrest and the complaint that 13 goes along with the affidavit? 14 Q. Okay. As to Exhibits #3, #5, and #6, did you 15 prepare each of those documents? 16 A. Yes, I did. 17 Q. Okay. Are there any false statements in 18 those documents that you prepared? 19 A. Yes. 20 Q. Can you tell me what are false statements in 21 those documents? 22 A. The defendant did knowingly -- 23 Q. Tell me which document you're referring to as</p>

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1 we go, too, please, sir.
 2 A. Document #3.
 3 Q. Okay. Which one is #3. I confuse myself.
 4 A. Affidavit.
 5 MS. CONNER: Affidavit.
 6 Q. All right. On #3. I'm sorry. I was --
 7 A. The details of offense.
 8 Q. Okay. And just for the record, tell me
 9 specifically what statement you're saying is
 10 a false statement.
 11 A. The defendant did knowingly enter or remain
 12 unlawfully in the building of.
 13 Q. Okay. Anything improper on Exhibit #5, or
 14 are there any false statements on Exhibit #5?
 15 A. Knowingly enter or remain in the building of
 16 another, his name, with intent to commit a
 17 crime therein, theft of property.
 18 Q. Okay. Exhibit #6, warrant of arrest.
 19 A. Fact that he was charged with the burglary.
 20 Q. Well, he was charged with the burglary,
 21 wasn't he?
 22 A. Right. That's what I'm saying. The -- the
 23 charge, I mean, the whole warrants.

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1 Q. Okay. So you're saying that you knowingly
 2 prepared documents to effectuate an arrest
 3 that had false statements in them?
 4 A. Well, the documents are already prepared.
 5 They're pretyped. I just go in and click
 6 burglary third, affidavit, put in Mr. Hogan's
 7 information. Mr. Arnaud, that's when I take
 8 him to the warrant clerk's office and he
 9 secures a warrant.
 10 Q. Okay. On Defendant's Exhibit #3, you said
 11 the statement, The defendant did knowingly
 12 enter or remain unlawfully in a building.
 13 And you said that's a fault statement?
 14 A. Right.
 15 Q. You typed that statement on this form, did
 16 you not?
 17 A. No. It's pretyped. I put in 425 North
 18 Eastern Boulevard, Montgomery, 36106,
 19 Arnaud's Quality Meat.
 20 Q. What else did you put in on this document?
 21 A. That's it.
 22 Q. You put in a charge on this document?
 23 A. I put in 425 North Eastern Boulevard. Charge

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1 is already there. You double click it on the
 2 computer, and it prints it out for you. You
 3 put in Chad Lamar Hogan, 425 North Eastern
 4 Boulevard, Montgomery, Alabama.
 5 Q. Did you know what this document was going to
 6 say before you had it printed out?
 7 A. Yes, I did.
 8 Q. And you printed it out with the purpose of
 9 Mr. Arnaud signing it?
 10 A. Yes, I did.
 11 Q. Okay. Mr. Pelham, you stated earlier, I
 12 believe that you had been a police officer
 13 for -- you were a police officer for a little
 14 over two years, is that correct?
 15 A. Right. Yes.
 16 Q. Did you ever have problems articulating full
 17 detail in your reports?
 18 A. No, I did not.
 19 Q. You never had to go back and redo a report?
 20 A. No, I did not.
 21 Q. Ever seen anybody besides this incident where
 22 somebody had to go back and redo a report
 23 because they didn't put enough detail in it?

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1 A. Yes, I've seen affidavits where the warrant
 2 clerk will ask like for harassment. For
 3 example, an officer would put a subject
 4 harassed me. Well, the warrant clerk would
 5 want to know, well, what did he say. What
 6 did he call you? What did he say to you?
 7 Q. And then they had to go back and put that in
 8 that --
 9 A. And they had to go back and put that in the
 10 affidavit.
 11 Q. That doesn't necessarily mean they were
 12 fabricating the statement?
 13 A. No, but it wasn't the elements of the arrest
 14 either. It was just what was said, you
 15 know. A dark color shirt, what color was it.
 16 Q. But, nonetheless, it was detail that was left
 17 out to begin with and had to be put back in;
 18 correct?
 19 A. Right. Right.
 20 Q. Have you seen that a lot?
 21 MR. LEWIS: Object to the form.
 22 A. I haven't. no.
 23 Q. You're aware that it happens. though.

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<p>1 correct?</p> <p>2 A. Right, yes.</p> <p>3 Q. It isn't necessarily evidence of fabrication</p> <p>4 of evidence --</p> <p>5 MR. NELMS: Object to the form.</p> <p>6 Q. -- if somebody goes back and amends a</p> <p>7 statement or report or an affidavit, is it?</p> <p>8 MR. NELMS: Object to the form.</p> <p>9 A. It -- I mean, I don't know.</p> <p>10 Q. But it can be --</p> <p>11 A. It happens. It happens every day. Yes and</p> <p>12 no both -- both ways.</p> <p>13 Q. It happens every day where people fabricate</p> <p>14 evidence?</p> <p>15 A. There's -- yeah. You'd be surprised.</p> <p>16 Q. Well, what knowledge do you have that</p> <p>17 evidence is being fabricated every day? What</p> <p>18 do you base that statement on?</p> <p>19 A. I heard, you know -- I hear other officers</p> <p>20 talking about it. You know, you spend 30, 45</p> <p>21 minutes trying to take somebody into</p> <p>22 custody. And if you got to squeeze a word or</p> <p>23 two in there to put the stamp of approval on</p>	<p>1 happens a lot. Now, as far as redoing the</p> <p>2 statement, I don't know how often that</p> <p>3 happens. A lie ain't nothing to tell to the</p> <p>4 Montgomery Police Department, put it that</p> <p>5 way.</p> <p>6 Q. These other incidents that you're speaking of</p> <p>7 where people fabricated evidence in their</p> <p>8 statements, did you report these incidents to</p> <p>9 internal affairs or anybody else?</p> <p>10 A. It was hearsay. It was hearsay. You weren't</p> <p>11 allowed to talk about a -- about anything.</p> <p>12 For this example, I wasn't allowed to talk</p> <p>13 about this to anybody except internal</p> <p>14 affairs.</p> <p>15 Q. But you were still able to report this to</p> <p>16 internal affairs, correct?</p> <p>17 A. I wouldn't -- no. Never --</p> <p>18 Q. I mean, you did report this to internal</p> <p>19 affairs, did you not?</p> <p>20 A. Yes, this I did.</p> <p>21 Q. But these other allegations that you've made</p> <p>22 where evidence gets fabricated every day at</p> <p>23 Montgomery Police Department I believe were</p>
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<p>1 it, I've seen that happen before.</p> <p>2 Q. Have you ever done that?</p> <p>3 A. I have not. This time here is the only time.</p> <p>4 Q. And you said it happens every day when people</p> <p>5 have to --</p> <p>6 A. There's a lot --</p> <p>7 Q. -- redo statements for innocent purposes as</p> <p>8 well, correct?</p> <p>9 MR. LEWIS: Object.</p> <p>10 MR. NELMS: Object to the form.</p> <p>11 A. I -- I wouldn't know. I mean I just -- I</p> <p>12 know what I hear.</p> <p>13 Q. I'm just asking you, did you earlier state</p> <p>14 that it happens every day --</p> <p>15 A. Yes.</p> <p>16 Q. That people redo statements for purely</p> <p>17 innocent reasons.</p> <p>18 MR. LEWIS: Object.</p> <p>19 MR. NELMS: Object to the form.</p> <p>20 A. Not redo statements, but I'm sure -- I mean,</p> <p>21 redo statements a lot. As far as, you know,</p> <p>22 going to court and saying yes, I saw this</p> <p>23 when they really didn't see it. Yeah, that</p>	<p>1 your words. Have you ever reported any of</p> <p>2 those other incidents to the proper</p> <p>3 authorities?</p> <p>4 A. The people you'd report it to know about it.</p> <p>5 They talk about. Who are you going to report</p> <p>6 it to?</p> <p>7 Q. But that didn't stop you this time, did it.</p> <p>8 A. It didn't stop me this time because it's my</p> <p>9 ass you're talking about.</p> <p>10 Q. Okay.</p> <p>11 A. You know.</p> <p>12 Q. Mr. Pelham, have you communicated with Chad</p> <p>13 Hogan in any way since March 30th, 2005.</p> <p>14 A. No, I have not.</p> <p>15 Q. Has anybody representing you communicated</p> <p>16 with Chad Hogan in anyway since March 30th,</p> <p>17 2005?</p> <p>18 A. Not that I know of.</p> <p>19 Q. Has anybody representing you, communicated</p> <p>20 with Chad Hogan or anybody representing Chad</p> <p>21 Hogan in any way since March 30th, 2005.</p> <p>22 MR. LEWIS: Object to the form.</p> <p>23 Q. In other words, do you know if your lawyer</p>

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<p>1 has talked to their lawyer -- to his lawyer?</p> <p>2 A. I don't know. I don't know.</p> <p>3 Q. You don't have any specific knowledge that</p> <p>4 your lawyer has spoken to his lawyer?</p> <p>5 A. No.</p> <p>6 Q. Mr. Pelham, I believe you said earlier that</p> <p>7 you had a copy of the tape of some of the</p> <p>8 radio traffic that occurred that evening; is</p> <p>9 that correct?</p> <p>10 A. Correct.</p> <p>11 Q. You didn't bring that with you?</p> <p>12 A. No, I did not.</p> <p>13 Q. Okay. Can you get your attorney a copy of</p> <p>14 that, please?</p> <p>15 A. I can.</p> <p>16 Q. Do you have any other tape recordings which</p> <p>17 you contend are evidence of the allegation</p> <p>18 that you've made in your verified complaint?</p> <p>19 A. No.</p> <p>20 Q. Okay. Do you have any journals or diary</p> <p>21 entries or any other documents which support</p> <p>22 the --</p> <p>23 A. I've got all the case file paperwork.</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. Did you send any other e-mails to the</p> <p>3 City of Montgomery or the mayor's office</p> <p>4 regarding your allegations?</p> <p>5 A. I think this was the only one.</p> <p>6 Q. Okay. Mr. Pelham, I've just handed you a</p> <p>7 document that we have marked as Defendant's</p> <p>8 Exhibit #8. Ask you first if you recognize</p> <p>9 this document.</p> <p>10 A. Yes, I do.</p> <p>11 Q. Okay. You had stated earlier that Officer</p> <p>12 Gordon prepared three different statements in</p> <p>13 connection with the arrest of Chad Hogan; is</p> <p>14 that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Is this the second statement that he</p> <p>17 prepared?</p> <p>18 A. This is the first statement.</p> <p>19 Q. This is the first statement. Where did you</p> <p>20 get this statement?</p> <p>21 A. Where did I get it?</p> <p>22 Q. Yeah.</p> <p>23 A. From Officer Gordon.</p>
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<p>1 Q. The case file paperwork that should be in</p> <p>2 the --</p> <p>3 A. Right.</p> <p>4 Q. -- file at the police department?</p> <p>5 A. Copies -- yeah, the copies of the affidavit,</p> <p>6 the incident report, all that.</p> <p>7 Q. Do you have any other type of documentation</p> <p>8 outside of that which you feel would support</p> <p>9 the allegations you've made in your verified</p> <p>10 complaint?</p> <p>11 A. No. I mean everything you've got, I got.</p> <p>12 MS. CONNER: You also had the second</p> <p>13 statement, and I gave him a copy</p> <p>14 of that.</p> <p>15 MR. WHITEHEAD: I'm going to get to</p> <p>16 that in just a second. Right.</p> <p>17 Q. All right. Mr. Pelham, I'm going to hand you</p> <p>18 a document we're going to mark as Defendant's</p> <p>19 Exhibit #7. You speak of an e-mail in your</p> <p>20 verified complaint that you sent to the</p> <p>21 mayor's office. Is this the e-mail that</p> <p>22 you're speaking of in your verified</p> <p>23 complaint?</p>	<p>1 Q. Okay. Is this the only statement that you</p> <p>2 have in your possession?</p> <p>3 A. This is a -- I got a copy of it at home, I</p> <p>4 believe.</p> <p>5 Q. Okay. This is the only -- do you have a copy</p> <p>6 of Exhibit #8 at home?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. You don't have a copy of any other</p> <p>9 statements from Officer Gordon other than</p> <p>10 Exhibit #8?</p> <p>11 A. I have two statements. This one and the</p> <p>12 other one I showed you.</p> <p>13 MR. WHITEHEAD: I'm confused,</p> <p>14 Roianne. This is the one you</p> <p>15 just gave me.</p> <p>16 MS. CONNER: Okay. There were three</p> <p>17 statements made. We don't have</p> <p>18 one of them, but we have this one</p> <p>19 and this one. They're different,</p> <p>20 if you read them. We have two of</p> <p>21 the three statements.</p> <p>22 MR. LEWIS: For the record, could you</p> <p>23 identify the exhibit numbers on</p>

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<p>1 the two to which you're 2 referring? 3 MS. CONNER: Okay. Exhibit #2 is the 4 last statement I'm assuming that 5 was made, because this is the one 6 that was in the case file. 7 MR. WHITEHEAD: Okay. 8 THE WITNESS: That's the third one. 9 This is the second one. 10 MS. CONNER: And this is -- #8 is the 11 second one. I don't -- 12 MR. WHITEHEAD: Okay. We said earlier 13 it was the first one? 14 THE WITNESS: That's my mistake. This 15 is the second one. 16 MS. CONNER: We don't have a copy of 17 statement one. 18 MR. WHITEHEAD: Okay. You've just got 19 a copy of -- for record purposes, 20 you have a copy of Exhibit #2 and 21 Exhibit #8. 22 MS. CONNER: Correct. 23 THE WITNESS: Correct.</p>	<p>1 A. There was one time I know it was just me and 2 Officer Gordon. And I couldn't -- they were 3 brief conversations. I don't know if there 4 was anybody else around or not. 5 Q. Okay. So, is the one in the hallway by the 6 copy machine, is that the same one that -- I 7 mean when you said once or twice in the 8 hallway by copy machine, is that in the same 9 place in the hallway or were there two 10 conversations in the hallway? 11 A. With Officer Gordon? There was more than 12 one. Two or three, I -- I'm not sure. 13 Q. In the hallway? 14 A. In the hallway. 15 Q. Okay. Were they all by the copy machine? 16 A. No. 17 Q. Okay. Can you recall if anybody else was 18 around during any of those conversations in 19 the hallway with Officer Gordon? 20 A. Maybe Frank Koscho. Maybe Lieutenant 21 Caulfield. 22 Q. You also said there was one in the property 23 supervisor's office. Do you recall if</p>
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<p>1 Q. You don't have any other statements, copies 2 of any other statements from Officer Gordon? 3 A. Correct. 4 Q. Okay. 5 MR. WHITEHEAD: Y'all, that's all I 6 have right now. Kim, do you want 7 to? 8 EXAMINATION 9 BY MS. FEHL: 10 Q. Mr. Pelham, my name is Kim Fehl, and I 11 represent the City in this case with Chad 12 Hogan. I just want to go over a few things. 13 I also represent Chief Baylor and Major 14 West. 15 You were referring to conversations you 16 had with Officer Gordon. And you said that 17 you had four or five. And I believe you said 18 you had one in Lieutenant Cook's office. 19 A. Correct. 20 Q. Was there anybody else present at that time? 21 A. Lieutenant Cook, Frank Koscho. 22 Q. Okay. Once or twice in the hallway, was 23 there anybody else present at that time?</p>	<p>1 anybody else was present at that time? 2 A. In the property supervisor's office was my -- 3 was my conversation with Mr. Arnaud. In the 4 property office -- just the regular property 5 office was my conversations with Officer 6 Gordon. And I don't recall anybody being 7 present. 8 Q. You also said once or twice in the conference 9 room. Was anybody else present when you were 10 in the conference room? 11 A. Maybe Frank Koscho. I think Officer -- 12 Officer Forbus was present. 13 Q. Approximately what was the time span from the 14 time that Mr. Hogan was brought in -- or 15 excuse me -- from the time you responded to 16 Arnaud's and returned back to headquarters, 17 until the warrant was secured for burglary? 18 How much time had elapsed in that period? 19 MS. CONNER: Kim, are you talking from 20 the initial call to the very end? 21 Is that what you're asking? 22 Q. Right. From the time you went to the 23 first -- you said you responded to Arnaud's.</p>

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<p>1 Okay. From that point until the time that 2 the warrant was secured. 3 MR. NELMS: Object to the form. 4 A. Probably five, six hours. 5 Q. Okay. And how many conversations did you 6 have with Chad Hogan during that time frame? 7 A. Three, four. 8 Q. Okay. And do you recall other suspects being 9 brought in, apprehended? 10 A. Yes. 11 Q. How many conversations did you have with 12 them? 13 A. About the same, three or four. 14 Q. Where was Chad Hogan and the other suspects 15 being detained or held at during this five or 16 six hour period? 17 A. Mr. Hogan was treated by the medics for his 18 dog bites. I spoke with him I think twice. 19 Once outside the parking lot. Once 20 downstairs. 21 Q. Downstairs where? 22 A. In the -- by the back desk of the police 23 department in the booking room. Once in my</p>	<p>1 Q. Okay. And let's just refer to them since you 2 can't recall their names. Mr. Hogan would 3 have been the first person apprehended; is 4 that correct? 5 A. Correct. 6 Q. And then where was he held until the warrant 7 was secured? 8 A. He was in the back of the police car. The 9 medics were tending to him. 10 Q. Until the warrant was secured? 11 A. No. After they treated him, myself and -- I 12 can't remember the officer that transported 13 him, but we walked him up to my cubicle and 14 handcuffed him to my desk. 15 Q. Okay. So did he sit at your desk the rest of 16 the night? 17 A. No. 18 Q. Okay. Where did you -- where was Mr. Hogan 19 held when he was not being interviewed? 20 A. In a holding cell. 21 Q. Which holding cell was it? 22 A. In the main conference room. 23 Q. Okay. And then suspect number two, where was</p>
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<p>1 office up in the detective division. Once in 2 the holding cell. The other guy, I don't 3 even remember his name, talked with him 4 before he even got out of the police car in 5 the parking lot headquarters; again in my 6 office and again in the conference room. 7 Q. Okay. And the third one, when did you talk 8 to him? 9 A. I don't. I don't remember the third one all 10 that much. I don't -- I don't know. 11 Q. Do you know where they were being held during 12 this four or five-hour period? 13 A. One was being held in the auto theft office, 14 which is as soon as you walk into the 15 detective division, second door on the left. 16 One was being held in my office. And one was 17 being held in the holding cell that's in my 18 office. 19 Q. In your -- 20 A. It's a -- it's a big office. Cubicles 21 really. There's a holding cell off of one 22 side. There's another little office off the 23 big room.</p>	<p>1 he held? 2 A. In the auto -- auto -- one of them was in the 3 auto theft office. 4 Q. Okay. And number three? 5 A. Was in the holding cell in the main -- in the 6 general property office. 7 Q. And where is your office located? 8 A. In the general property office. 9 Q. Okay. Okay. You said you had several 10 conversations with suspect number two and 11 three, correct? 12 A. They are -- the -- other than Mr. Hogan? 13 Q. Right. 14 A. Yeah. Yes. 15 Q. You also said that, I believe if I recall, 16 that when you -- you heard the call come in 17 for Officer Gordon when he arrived at 18 Arnaud's. And, I believe, did you say you'd 19 read the transcript of that radio dispatch or 20 that radio report? 21 A. That -- that I have the tape, the audio. 22 Q. Okay. Okay. And you said that you knew at 23 that point you were going to need a</p>

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1 confession or something based on what he had
2 said over the radio. You said that earlier
3 in your deposition?
4 A. I know that -- right. I know that I will
5 need either a confession from the suspects or
6 property in the suspects' car, or something
7 that would link them to going inside the
8 business.
9 Q. Okay. Exactly, if you can just tell me --
10 and I think Mr. Whitehead touched on this,
11 but just for my clarification, what elements
12 do you look for to secure a burglary warrant?
13 A. Number one, you've got to enter the business
14 or the house, you know, with -- with the
15 intent to take something.
16 Q. So you have to have a confession to have
17 probable cause that somebody intended to
18 enter?
19 A. No.
20 MR. NELMS: Object to the form
21 Q. Okay. What do you look for to secure a
22 burglary warrant? What actions?
23 A. Look for evidence that somebody burglarized

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1 the business. Evidence that the -- that the
2 business was entered, you know. Don't have
3 to have anything stolen from the business to
4 have a burglary, but you do have to have some
5 kind of entry, prove there was entry made.
6 Q. Have you ever charged anybody with attempted
7 burglary?
8 A. I think once or twice.
9 Q. And what kind of evidence did you look for,
10 for that?
11 A. Same. You know, intent to -- I think there
12 was a time where somebody had kicked a door
13 in and an officer pulled up before the
14 burglary could happen. I don't know.
15 Burglary tools, evidence of pry marks on the
16 door.
17 Q. Okay.
18 A. Some type of evidence.
19 Q. Okay. Then you said that when you were
20 referring -- and I can't remember the exhibit
21 numbers. It was the warrant and affidavit.
22 I believe Mr. Whitehead was just asking you
23 what on those documents was false. And you

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1 said to knowingly enter and remain. Is that
2 a correct --
3 A. It's -- it's a false that the defendant did.
4 Everything after that is false.
5 Q. How do you know that?
6 A. I'm a detective. That's -- that's why I was
7 working the case.
8 Q. But how do you know as you sit here today
9 that they did not go into that?
10 MR. LEWIS: Object to the form.
11 A. The window was left open, just like
12 Mr. Arnaud said. As much as it was raining,
13 there would -- well, the pots on the
14 windowsill, the figurine, I don't think -- I
15 don't think if somebody was breaking into a
16 business they would pick them up and gently
17 lay them on the ground, side by side. Cash
18 lay -- cash money laying on the counter in
19 plain view I could see from the window. I
20 think any burglar would take that money.
21 Q. But this is based on your assumptions, not on
22 your knowledge.
23 MR. LEWIS: Object to the form.

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1 MR. NELMS: Object to the form.
2 MR. LEWIS: So is the question.
3 Q. Well, were you present when this car pulled
4 up to Arnaud's?
5 A. No, I was not.
6 Q. Okay. So you can't say right here as you sit
7 today that that is a false statement?
8 MR. NELMS: Object to the form.
9 A. I can. I was the case agent on this case.
10 That's what I got paid to do. That was my
11 job. That's why patrol didn't investigate
12 cases. That's, you know --
13 Q. So you knew every case that you made was
14 going to be a conviction in court?
15 MR. LEWIS: Object to the form.
16 MR. NELMS: Object to the form.
17 A. Are you saying did I know every case I
18 prepared I wasn't going to lose?
19 Q. Yes.
20 A. No.
21 Q. Did you --
22 A. And I blame that on the judicial system. Not
23 on my case work.

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<p>1 Q. Okay. So you think everybody that talked to 2 you told you the truth? 3 MR. NELMS: Object to the form. 4 A. When you got three guys that are separated 5 ever since you take them into custody. They 6 don't talk to each other the whole time, and 7 he tells me word for word the same thing this 8 guy tells me, he tells me word for word the 9 same thing this guy tells me, that's an 10 airtight alibi. When you check into it, you 11 call the business they say they were at, they 12 said they were there, and it checks out, 13 that's the only thing that any law 14 enforcement agency has got to go on. 15 Q. Is it possible they could have talked while 16 they were in the car fleeing from the 17 police? 18 MR. LEWIS: Object to the form. 19 A. Anything's possible. 20 Q. Okay. You said you had a conversation with 21 Major West and Lieutenant Jones and Sergeant 22 Tatum, was that the next day? 23 A. Yes, it was.</p>	<p>1 that's what had something to do with it? 2 A. If you're talking about when I was hit with a 3 flashlight, I mean, as I was getting hit with 4 it, the words, you son of a bitch, you got 5 everybody pissed off at you. And you need to 6 take the recorder out of your pocket 7 recording people. Yeah, that -- 8 Q. But nobody said, Michael Briddell said this 9 is for you? 10 A. I don't understand what you're asking me. 11 Q. I mean, do you assume that things started 12 happening like -- I think you said things 13 were covered up and all after you called 14 Michael Briddell's office? 15 A. Right. The -- the harassment and all -- all 16 the things that were being said to me were 17 after this incident with Mr. Hogan. The fact 18 that I called Mr. Briddell's office, I don't 19 think that supports me being harassed. I 20 think that's when -- when -- and I'll leave 21 it at that. Me calling his office didn't 22 have anything to do with being harassed or 23 getting hit. It was me requesting an</p>
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<p>1 Q. Okay. And that's when you were asking for an 2 internal affairs investigation? 3 A. Yes, it was. 4 Q. Do you recall when the internal affairs 5 investigation was opened? 6 A. That day. That night. 7 Q. Okay. Did you have any other 8 conversations -- and I'm just asking this and 9 I know you said you couldn't talk to anybody 10 about this. But did you have any other 11 conversations with Major West or Sergeant 12 Tatum or Lieutenant Jones or Arthur Baylor 13 about this after you asked for the internal 14 affairs investigation to be opened? 15 A. No, not that I recall. 16 Q. Okay. And you said earlier that you thought 17 things started happening after there was a 18 call to Michael Briddell's office. Did you 19 make the call to Michael Briddell's office? 20 A. Yes, I did. 21 Q. Okay. Do you have anything to support your 22 conclusion that things started to happen 23 after you called his office that you think</p>	<p>1 internal investigation. 2 Q. And do you have anything to support that 3 assumption that you're making? 4 A. Yeah, I just told you. I was hit with a 5 flashlight. I was called a son of a bitch 6 for requesting an internal investigation. 7 And it was thought that I was going around 8 recording people that were involved in the 9 situation. 10 Q. But that's your own perception; is that 11 correct? 12 A. No, that's -- I mean, that's -- that's 13 fact. That's what happened. 14 Q. I know. But did somebody say that to you or 15 is there anything you have in evidence, a 16 piece of paper to support that assumption? 17 MR. LEWIS: Object to the form. 18 A. I don't think you understand what I'm 19 saying. 20 Q. I don't think you understand my question. 21 MR. NELMS: Object to the form. 22 A. I was hit -- hit with the flashlight. Okay. 23 He told me, you son of a bitch, you got</p>

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<p>1 everybody pissed off at you. You're going 2 around recording everybody, trying to bring 3 everybody down that's involved. Why don't 4 you take the recorder out of your pocket. 5 Q. Okay. Is it possible that could have been 6 from internal affair's statements being given 7 as opposed to a phone call to Michael 8 Briddell's office? 9 A. This has nothing to do with Michael 10 Briddell's office. I don't -- I don't 11 understand. 12 Q. That was your statement and that's what I was 13 trying to find out. 14 A. I mean, yeah, it just -- 15 MS. CONNER: He's trying to give you -- 16 he called Briddell's office, made 17 the appointment; and then before 18 he could talk to Briddell, the 19 attack occurred, Kim. 20 A. Right. 21 MS. CONNER: That's what he trying to 22 give you a time frame. 23 A. I wanted to see --</p>	<p>1 might not have been his words. Do you 2 remember exactly what his words were to you? 3 A. No, I don't. 4 Q. Okay. So the fact that there was not a crime 5 committed, was that your paraphrasing? 6 A. That's just -- that's the way I talked. 7 That's the way police officers talked. I 8 mean he could have said something like there 9 was no burglary committed or there was no, 10 you know, I don't know exactly what he said. 11 Q. Okay. When did you find out what was found 12 in the car? 13 A. Shortly after I made it back to 14 headquarters. When I left Arnaud's Quality 15 Meats. Sometime after midnight. 16 Q. So was that 30 minutes, an hour, do you 17 remember -- 18 A. It was longer than 30 minutes. 19 Q. What's your best recollection? 20 A. Around an hour. 21 Q. Okay. 22 MS. FEHL: That's it. 23 MR. LEWIS: Praise the Lord.</p>
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<p>1 MS. CONNER: He's not saying Briddell 2 caused the attack. 3 Q. What he said was things started happening 4 after I called Michael Briddell's office. 5 A. I'm giving you -- because I don't know the 6 date. I'm giving you a round-about time. 7 About the time that I called Mr. Briddell's 8 office, that's when -- that's when that 9 happened. I wanted to see him that day or 10 that week, but he made an appointment two 11 weeks down road. 12 Q. My question is was that an assumption or was 13 he just making it as a cause and effect kind 14 of link kind of thing? I see what you're 15 saying. 16 A. I mean I don't know. If it was a cause and 17 effect, I don't know. 18 Q. One other thing I was going to ask you. You 19 said earlier that you tried to get Mr. Arnaud 20 to sign a form not to prosecute? 21 A. Right. 22 Q. You also said that he said there was not a 23 crime not committed, but then you said that</p>	<p>1 MR. WHITEHEAD: Okay. You got 2 anything? 3 MR. LEWIS: I haven't got anything. 4 MR. WHITEHEAD: Roianne? 5 MS. CONNER: Is it my turn? 6 MR. WHITEHEAD: Go ahead. 7 EXAMINATION 8 BY MS. CONNER: 9 Q. Kirk, do you recognize this commendation? 10 A. I do. 11 Q. When were you given that commendation? 12 A. March 3rd, 2005. 13 Q. Just what, 27 days prior to the incident? 14 A. Correct. 15 Q. And did this commendation -- who was it 16 signed by? 17 A. Myself and Lieutenant Cook. 18 Q. And Lieutenant Cook in that commendation said 19 that you've -- that he found you to be a 20 responsible person who does the right thing 21 when no one is watching. Is that what it 22 says? 23 A. Yes.</p>

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1 Q. And he was giving you a commendation for your
2 honesty?
3 A. Yes.
4 Q. He also called you a resourceful officer who
5 is always striving to become a more
6 technically proficient investigator. This
7 was complimentary of you, was it not?
8 A. Yes.
9 Q. And of your work, was it not?
10 A. Yes.
11 Q. And he recommended you for the merit
12 increase, did he not?
13 A. Yes.
14 Q. Okay. And this is the confirmation of the
15 merit increase; is that correct?
16 A. Yes.
17 Q. And you received the merit increase, the
18 payable date was April 1, '05?
19 A. Correct?
20 MS. CONNER: Okay. I'd like to admit
21 these. Okay.
22 MR. LEWIS: Could we identify those on
23 the record?

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1 MR. WHITEHEAD: Yeah, let's do. I
2 don't really want to put it as
3 defendants.
4 MS. CONNER: I'm not a defendant?
5 MR. WHITEHEAD: Yeah, you're not a
6 party, so let's just --
7 MS. CONNER: Witness? How --
8 MR. WHITEHEAD: Yeah. Yeah. That's
9 fine.
10 MS. CONNER: Pelham #1 and #2.
11 MR. WHITEHEAD: All right. We're going
12 to mark the --
13 MS. CONNER: Commendation.
14 MR. WHITEHEAD: Commendation as Pelham
15 #1 and the confirmation of the
16 merit pay increase, correct, as
17 Pelham #2.
18 Q. Kirk, when you were -- when were you hit with
19 the flashlight?
20 A. It was a couple of weeks after -- after this
21 incident.
22 Q. Okay. And did it require you to seek medical
23 attention?

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1 A. Yes.
2 Q. And how did you get to seek medical
3 attention?
4 A. I had to drive my personal vehicle to
5 Pri-Med.
6 Q. Is that because they had taken away your City
7 car?
8 A. Yes.
9 Q. Who did you report the injury to?
10 A. Major J.C. West.
11 Q. And how soon after the attack did you report
12 the injury?
13 A. It was right after.
14 Q. Okay. Within 10 minutes, 15 minutes, how
15 soon?
16 A. I don't remember. Don't think it was any
17 more than a hour after.
18 Q. Okay. And what was the outcome of your
19 injury?
20 A. The -- my ankle swelled up. They gave me
21 some pain medicine, an anti-inflammatory.
22 Q. Okay. As result of the physical attack, what
23 did you do then?

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1 MS. FEHL: Object to the form on that.
2 A. I -- after I left the doctor, I talked with
3 Major West about it. And that's when I
4 resigned from the police department.
5 Q. Had you been asking for a transfer out of the
6 detective division due to the hostility?
7 A. Yes.
8 Q. Who all had you requested your transfer from?
9 A. Major West, Sergeant Tatum, Sergeant Gordon,
10 Lieutenant Jones.
11 Q. Okay. And had your request been denied?
12 A. Yes. Also I went to Art Baylor about it as
13 well.
14 Q. And what did Chief Baylor say to you?
15 A. He said that they would -- they would look
16 into it. Internal affairs would investigate
17 it and to determine whether there was any
18 wrongdoing.
19 Q. Have you ever heard of the outcome of the
20 investigation?
21 A. No, I have not.
22 Q. Was there ever any investigation, to your
23 knowledge, of your physical attack?

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<p>1 A. No.</p> <p>2 MS. CONNER: Okay. Nothing further</p> <p>3 MS. FEHL: Let me just follow up with a</p> <p>4 few things on that.</p> <p>5 EXAMINATION</p> <p>6 BY MS. FEHL:</p> <p>7 Q. Who hit you with the flashlight?</p> <p>8 A. Scott Seithalil.</p> <p>9 Q. Where did it happen?</p> <p>10 A. In the stairwell at headquarters.</p> <p>11 Q. Who else was with you?</p> <p>12 A. Chris Gruhn.</p> <p>13 Q. Where did you go -- I mean, did you go to</p> <p>14 Major West's office right then and report it?</p> <p>15 A. Mayor West was in Birmingham.</p> <p>16 Q. Okay. How --</p> <p>17 A. After.</p> <p>18 Q. How did you report it to him then?</p> <p>19 A. I called him on his cell phone or on the</p> <p>20 radio.</p> <p>21 Q. Okay. Did anybody call you back?</p> <p>22 A. I got ahold of him.</p> <p>23 Q. Okay. Were you told to treat it as a</p>	<p>1 A. No. I stayed in the detective division, but</p> <p>2 I wasn't on late car.</p> <p>3 Q. Okay. Did they move you to a different</p> <p>4 shift?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Did you ever ask to be put back on the</p> <p>7 shift that you were on?</p> <p>8 A. No.</p> <p>9 MS. FEHL: No further questions.</p> <p>10 MR. NELMS: I've got a couple of</p> <p>11 questions real quick.</p> <p>12 EXAMINATION</p> <p>13 BY MR. NELMS:</p> <p>14 Q. To the best of your knowledge and experience,</p> <p>15 Kirk, would Major West have had the authority</p> <p>16 to stop the prosecution of Chad Hogan?</p> <p>17 A. Yes.</p> <p>18 Q. To the best of your knowledge and experience</p> <p>19 as a police officer in the Montgomery Police</p> <p>20 Department, would the chief of police have</p> <p>21 had authority to stop the prosecution of the</p> <p>22 Chad Hogan?</p> <p>23 A. Yes.</p>
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<p>1 worker's comp injury?</p> <p>2 A. I was -- yes, I was told to wait on</p> <p>3 Lieutenant Phillips. He was -- he was</p> <p>4 covering for Major West while he was in</p> <p>5 Birmingham. And it -- it swelled up. I told</p> <p>6 him I was on the way to Pri-Med.</p> <p>7 Q. So did Lieutenant Phillips call you back</p> <p>8 after you called Major West?</p> <p>9 A. I didn't talk to Lieutenant Phillips till</p> <p>10 seven o'clock that night.</p> <p>11 Q. What time did you report it to Major West?</p> <p>12 A. I don't recall.</p> <p>13 Q. Okay.</p> <p>14 A. Lieutenant Phillips called, wanted to take a</p> <p>15 picture of it and that was around, that --</p> <p>16 that was that evening.</p> <p>17 Q. Did you let him take a picture of it?</p> <p>18 A. No. I was at home. No.</p> <p>19 Q. Okay. Were you moved at all during this</p> <p>20 internal affairs investigation?</p> <p>21 A. Was I moved?</p> <p>22 Q. Yes. Did you stay on late car or third shift</p> <p>23 the whole time after you reported it?</p>	<p>1 Q. To best of your knowledge, did either of them</p> <p>2 stop the prosecution of Chad Hogan?</p> <p>3 A. No, they didn't.</p> <p>4 MR. NELMS: Thank you. Nothing</p> <p>5 further.</p> <p>6 (The deposition concluded</p> <p>7 at 4:44 p.m.)</p> <p>8 *****</p> <p>9 FURTHER DEPONENT SAITH NOT</p> <p>10 *****</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>

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1 REPORTER'S CERTIFICATE
2 STATE OF ALABAMA
3 MONTGOMERY COUNTY

4 I, Mallory N. McCutchin, Court Reporter and
5 Commissioner for the State of Alabama at Large,
6 hereby certify that on Monday, October 3, 2005, I
7 reported the deposition of LEONARD KIRK PELHAM,
8 who was first duly sworn or affirmed to speak the
9 truth in the matter of the foregoing cause, and
10 that pages 5 through 153 contain a true and
11 accurate transcription of the examination of said
12 witness by counsel for the parties set out
13 herein.

14 I further certify that I am neither of kin
15 nor of counsel to any of the parties to said
16 cause, nor in any manner interested in the
17 results thereof.

18 This 26th day of October, 2005.

19
20

21 MALLORY N. MCCUTCHIN, COURT REPORTER
22 And Commissioner for the
State of Alabama at Large

23

MY COMMISSION EXPIRES: 2/24/09